15—116

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 216.

REBECCA GRAY, ADMINISTRATRIX, &c., OF WILSON H. GRAY, DECEASED, APPELLANT,

vs.

THE NATIONAL STEAMSHIP COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 27, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 216.

REBECCA GRAY, ADMINISTRATRIX, &c., OF WILSON H. GRAY, DECEASED, APPELLANT,

vs.

THE NATIONAL STEAMSHIP COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Schedule A—Agreement between the National Steam Navigation Co., (Limited,) Wm. Rome and Charles E. Dixon, and the National Steamship Co., (Limited,) Aug. 16, 1867	7	4
B—Letters of administration to Rebecca Gray, Oct. 29, 1867	22	13
C—Deed between Rebecca Gray, administratrix, &c., and Asa F. Miller, December 11, 1869	23	14
D—Assignment of Asa F. Miller to Henry Morrison, Jan. 7, 1874	26	15
E—Deed between Henry Morrison and Rebecca Gray, administratrix, &c., Feb. 16, 1877	27	17
F—Return of final winding-up meeting of the National Steam Navigation Co., (Limited,)	29	17
G—Order of Supreme Court of New York discontinuing cause of Asa F. Miller *vs.* the National Steamship Co.	29	18
Answer	31	18
Replication	37	22

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Evidence for complainant	38	22
Testimony of Henry Morrison	39	23
William H. Maitland	48	28
Judgment roll of superior court of city of New York in cause of Rebecca Gray, administratrix, *vs.* National Steam Navigation Co.	51	30
Extracts from Statutes at Large of United Kingdom of Great Britain and Ireland, Vol. 102, 25 & 26 Victoria	59	34
Exhibit No. 1—Agreement of Rebecca Gray, administratrix, Feb. 19, 1877	67	41
No. 2—Application for change of register of certain vessels, &c.	69	41
Commission to take testimony at Liverpool	73	43
Interrogatories to be administered	75	43
Transcript of Register	80	46
Certificates of Incorporation	152	110
Testimony of George Thomas	154	111
Commission to take testimony at Liverpool	156	112
Interrogatories to be administered	157	113
Testimony of Edward King Hayward	162	115
William Rome	164	117
Defendant's evidence	168	119
Records in Lehigh Coal & Navigation Co. & Rebecca Gray, administratrix, &c., *vs.* steamship "Pennsylvania," &c.	168	119
Libel	169	119
Claim	173	121
Bond for value	174	122
Answer	176	123
Decree of district court	180	125
Decree of circuit court	181	125
Certificate to apostles	184	127
Libel of Solliday *et al. vs.* steamship "Pennsylvania," &c	185	127
Lehigh Coal & Navigation Co. *et al. vs.* steamship "Pennsylvania," &c.	189	130
Bassett *et al. vs.* steamship "Pensylvania," &c.	193	130
Morris *et al. vs.* " " "	197	135
Caldwell *et al. vs.* " " "	201	137
Stipulation for libellants' costs, Solliday *vs.* steamship "Pennsylvania," &c.	205	139
Lehigh Coal and Navigation Co. *vs.* steamship "Pennsylvania," &c.	206	140
Bassett *et al. vs.* steamship "Pennsylvania," &c.	208	141
Morris *et al. vs.* steamship "Pennsylvania," &c.	209	142
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	211	143
Monition—Caldwell *et al. vs.* steamship "Pennsylvania," &c.	212	144
Marshal's return	213	145
Stipulation waiving service of process of attachment	215	145
Order on stipulation waiving service	217	146
Claim of owners, Solliday *vs.* steamship "Pennsylvania," &c.	218	147
Lehigh Coal & Nav. Co. *vs.* steamship "Pennsylvania," &c	220	148

	Original.	Print.
Claim of owners, Bassett *vs.* steamship "Pennsylvania," &c.	222	149
Morris *et al. vs.* steamship "Pennsylvania," &c.	224	150
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	226	151
Stipulation for cost, Bassett *vs.* steamship "Pennsylvania," &c.	228	152
Solliday *vs.* steamship "Pennsylvania," &c.	229	152
Morris *et al. vs.* steamship "Pennsylvania," &c.	231	154
Lehigh Coal & Navigation Co., &c., *vs.* steamship "Pennsylvania," &c.	232	154
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	234	156
Bonds of National Steamship Co. *et al.*	235	156
Order to discharge	245	162
Answer, Solliday *vs.* steamship "Pennsylvania," &c.	246	163
Lehigh Coal & Navigation Co. *et al. vs.* steamship "Pennsylvania," &c.	248	164
Bassett *vs.* steamship "Pennsylvania," &c.	250	167
Morris *et al. vs.* " " "	252	168
Caldwell *et al. vs.* " " "	255	169
Hearing of causes in district court	257	169
Testimony of John Conlan	260	171
George Fouratt	265	174
Andrew Tibbins	267	175
Elias Delanoy	268	176
John Daly	269	177
Patrick Riley	269	177
Daniel Vanderwater	270	178
William Bassett	271	178
Nathan Solliday	272	179
William Bassett (recalled)	272	179
John M. Weeks	272	179
David M. T. Powell	274	180
Patrick Killing	274	180
John Ferber	276	182
Robert Evans	277	182
Henry Murphy	278	182
Decree in Solliday *vs.* steamship "Pennsylvania," &c.	282	185
Lehigh Coal & Navigation Co. *et al. vs.* steamship "Pennsylvania," &c.	283	186
Bassett *et al. vs.* steamship "Pennsylvania" &c.	284	186
Morris *et al vs.* steamship "Pennsylvania," &c.	285	186
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	287	187
Notice of appeal, Solliday *vs.* steamship "Pennsylvania," &c.	288	188
Lehigh Coal & Navigation Co. *et al. vs.* steamship "Pennsylvania," &c.	289	188
Bassett *et al. vs.* steamship "Pennsylvania," &c.	290	189
Morris *et al. vs.* steamship "Pennsylvania," &c.	291	189
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	292	189
Bond on appeal, Solliday *vs.* steamship "Pennsylvania," &c.	293	190
Lehigh Coal & Navigation Co. *et al. vs.* steamship "Pennsylvania," &c.	295	191
Bassett *vs.* steamship "Pennsylvania," &c.	297	192
Morris *et al. vs.* steamship "Pennsylvania," &c.	299	193
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	301	194

	Original.	Print.
Petition for appeal, Solliday *vs.* steamship "Pennsylvania," &c.	303	196
Lehigh Coal & Navigation Co., &c., *vs.* steamship "Pennsylvania," &c.	305	197
Bassett *vs.* steamship "Pennsylvania," &c.	307	198
Morris *et al. vs.* steamship "Pennsylvania," &c.	309	199
Caldwell *et al. vs.* steamship "Pennsylvania," &c.	312	201
Decision of Judge Blatchford	314	202
Summons in Miller *vs.* National Steamship Co.	319	205
Complaint in Miller *vs.* National Steamship Co.	321	205
Answer in Miller *vs.* National Steamship Co.	325	207
Judgment in Miller *vs.* National steamship Co.	328	209
Judgment on appeal in Miller *vs.* National Steamship Co.	329	209
Hearing of cause	330	210
Opinion	332	210
Final decree	389	226
Stipulation as to record	391	226
Petition for appeal	393	226
Bond	399	228
Citation	401	229
Clerk's certificate	404	230

1 In the Circuit Court of the United States for the Southern District of New York. In equity.

To the judges of the circuit court of the United States for the southern district of New York:

Rebecca Gray, a citizen of the State of Pennsylvania, administratrix of the goods, chattels and credits which were of Wilson W. Gray, deceased, brings this, her bill, against the National Steamship Company, a foreign corporation incorporated under and pursuant to the laws of the United Kingdom of Great Britain and Ireland.

And hereupon your oratrix complains and says: That on or about the sixteenth day of August, in the year one thousand eight hundred and sixty-seven, a certain foreign corporation, to wit, the National Steam Navigation Company, then existing under and pursuant to a certain statute of the said United Kingdom of Great Britain and Ireland, known as the "Companies Act of 1862," William Rome and Charles Edward Dixon and the defendant in this action, made and entered into an agreement, whereof a copy is hereto annexed, marked Schedule "A," and to which reference is made as forming a part of this bill of complaint.

2 That on the formation of the defendant as a company, the officers of the said the National Steam Navigation Company, to wit, William Boyd MacAlister, general manager; Edward King Hayward, secretary and treasurer; William Rome, chairman of the board of directors, and the same individuals as directors, became and were the officers and the identical officials of the defendant in this action, who is a foreign corporation existing under and pursuant to said "The Companies Act of 1862."

That on the 29th day of October, in the year 1867, letters of administration of the estate of the late Wilson W. Gray were duly issued and granted to your oratrix by the surrogate of the county of New York, a duly certified copy whereof is hereto annexed, marked schedule "B," to which reference is had as forming a part of this bill of complaint, whereby she was duly appointed administratrix of the goods, chattels, and credits which were of the said Wilson W. Gray, deceased, and that thereupon she duly qualified and entered upon the duties of her said office.

That on the 23d day of June, 1868, your oratrix, as administratrix of the goods, chattels, and effects which were of Wilson W. Gray, the deceased husband of your oratrix, duly recovered in the superior court of the city of New York, against the said the National Steam Navigation Company, a judgment for the sum of three thousand two hundred and sixty-nine 5-100 dollars under and pursuant to the act of the legislature of the State of New York, entitled an act requiring compensation for causing death by wrongful act, neglect or default, and which judgment is now vested in the plaintiff, due proof whereof is made by the assignments and acknowledgments hereto annexed, marked schedules C, D and E, to which your oratrix refers as forming part of this bill of complaint.

3 That on the day and year last mentioned execution was

duly issued on said judgment to the sheriff of the city and county of New York.

That on the 25th day of August, in the year last mentioned, the said execution was returned unsatisfied and unpaid, and that the said judgment now remains unsatisfied and unpaid.

Your oratrix alleges, upon information and belief, that after the accruing of the cause of action on which said judgment was obtained, to wit, on the 24th day of October, in the year one thousand eight hundred and sixty-seven, and after the recovery of said judgment and the return of said execution, the said judgment debtor, "The National Steam Navigation Company," transferred and disposed of certain property of and belonging to said judgment debtor to the defendant in this action, and that such transfer and disposition was in fraud of the rights of your oratrix to have the said judgment paid and satisfied, and that the property aforesaid transferred and disposed of was of the value of several thousand dollars.

Your oratrix also complaining alleges that the said judgment debtor, The National Steam Navigation Company, at the time of the accruing of the cause of action on which said judgment was obtained, and that at the time of the recovery of said judgment and the issuing of the execution thereon and return thereof, was the owner of certain steamships, to wit, The Queen, England, Denmark, Helvetia, Erin, Pennsylvania, Virginia, and Louisiana, and that said judgment debtor, The National Steam Navigation Company, had not, at the respective times aforesaid, made any change of ownership or sale whatsoever thereof by bill of sale according to the laws of said United Kingdom of Great Britain and Ireland, and your oratrix avers that the said judgment debtor had not otherwise made
4 any lawful change of ownership of said steamships or sale thereof, or any of them, at the respective times aforesaid.

Your oratrix further alleges that the judgment debtor, the National Steam Navigation Company, from, on, or about the 16th day of August, 1867, was engaged in winding up under and pursuant to the act of the said United Kingdom of Great Britain and Ireland, known as "The Companies Act of 1862."

And that said judgment debtor did, on or about the 12th day of July, 1870, accomplish and terminate the winding up of said judgment debtor, and that under and pursuant to said act last mentioned said judgment debtor, or its liquidators, on or about the 12th day of July, 1870, filed a return of final winding up meeting with the registrar of Joint Stock Companies pursuant to said act last mentioned, a copy whereof is hereto annexed, marked Schedule "F," to which your oratrix refers as forming a part of this bill of complaint.

Your oratrix further avers that in the supreme court of the State of New York, in an action by and between one Asa F. Miller, then the assignee of your oratrix as plaintiff against this defendant as defendant therein for the relief sought in the complaint in this action by reason and for the cause of action therein set forth and alleged after a judgment of dismissal of the complaint on the resting of plaintiff's case, which dismissal was without finding any facts or

conclusions of law, and which dismissal was affirmed on appeal at a general term of said court, and not in the court of appeals of said State, and that subsequently an order of discontinuance of said action was entered, a duly certified copy of which order is hereto annexed, marked Schedule "G," and to which your oratrix refers as forming a part of this bill of complaint.

And your oratrix also avers that the defendant in this
5 action has failed and refused, at the city of New York aforesaid, to pay and satisfy the said judgment, and that the said defendant has maintained and kept possession of the said property transferred and disposed of, or the proceeds thereof, in fraud of the oratrix's right to have the said judgment paid and satisfied pursuant to the provisions of the agreement aforesaid and otherwise in disregard of the rights of your oratrix, and said defendant continues so to do.

That the said the National Steam Navigation Company has no property except that embraced in the transfer and disposition thereof, by them, to the defendant in this action, as aforesaid, out of which the execution aforesaid could or can be satisfied in whole or in part, and that unless the said property and proceeds thereof can be reached and applied to the payment of the said judgment, the same will remain wholly unpaid and unsatisfied.

Wherefore your oratrix prays:

First. That a receiver of all the property and effects of the said the National Steam Navigation Company, at the time of said assignments, transfer, and disposition aforesaid to the defendant or at any time thereafter, be appointed.

Second. That the defendant be adjudged to account for all the property received by it under the assignment, transfer, and disposition aforesaid, and for all proceeds arising from the sale thereof and to deliver the same to such receiver.

Third. That the said receiver may be directed to sell the said property or so much thereof as may be necessary to pay out of the proceeds of said property the judgment aforesaid, the costs and expenses of this action, and hold the balance subject to the order of the court.

6 And that your oratrix may have such other relief or that she may have such further or different relief herein as to the court may seem meet.

To the end, therefore, that the said defendant may, if he can, show why your oratrix should not have the relief hereby prayed, and may full, true, direct, and perfect answer make, according to the best of its knowledge, information, and belief, to all and singular the several matters hereinbefore averred and set forth as fully and particularly as if the same were here repeated, paragraph by paragraph, and they were severally interrogated thereunto; and more especially if the agreement referred to as Schedule "A" was or was not made and entered into by and between the parties thereto when and where the change of ownership of said steamships was made.

How the said change of ownership of said steamships was made, by whom, to whom, if by writing or any document, that a copy

thereof be set forth and annexed to the answer of the defendant herein.

And your oratrix will ever pray, &c.

REBECCA GRAY,
Administratrix of the goods, chattels, and credits which were of Wilson W. Gray, deceased,
By HENRY MORRISON,
Her Attorney.
LAUTERBACH & SPINGARN,
Solicitors for Plaintiff, 206 Broadway, New York.
H. MORRISON,
Of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

On this 12th day of June, 1878, before me came Henry
7 Morrison, and he, being by me duly sworn, did depose and say that he was the person of that name who has signed the foregoing bill of complaint and that he had signed the same with the name of the said oratrix as her attorney and agent in fact and was authorized so to do. And he did further depose and say that he had read the said bill and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters herein stated on information and belief, and as to those matters he believes it to be true.

JOHN A. SHIELDS,
United States Commissioner, Southern District of New York.

Schedule A.

Articles of agreement, made the sixteenth day of August, one thousand eight hundred and sixty-seven, between The National Steam Navigation Company, limited, of the first part, William Rome of Liverpool, in the county of Lancaster, merchant, and Charles Edward Dixon of the same place, merchant, hereinafter called "the liquidators," of the second part, and the National Steamship Company, limited, of the third part. Whereas the National Steam Navigation Company, was, by virtue of the act enabling joint stock companies to be formed on the principle of limited liability, incorporated under, and in pursuance of the joint stock companies act, 1862. And whereas on the second day of July, one thousand eight hundred and sixty-seven, the then chairman of the said National Steam Navigation Company, addressed to the shareholders of that company a circular-letter enclosing a statement, which circular and statement are in the words and figures following:

8 THE NATIONAL STEAM NAVIGATION COMPANY (Limited),
14 THE ALBANY OLD HALL STREET,
LIVERPOOL, 2*d July*, 1867.

SIR: Referring to the enclosed circular, I am requested to invite your attendance at an extraordinary general meeting of the company, to be held on Tuesday, the 9th day of July instant, at twelve o'clock,

at noon, at the Law Association Rooms, 14 Cook Street, Liverpool, for the purpose of considering and assenting to the plan therein recommended.

In case you should be unable to attend, you are requested to sign and send your acceptance of shares to the secretary prior to the day of the meeting.

I am, sir, your obedient servant,

EDWARD K. HAYWARD, *Secretary.*

THE NATIONAL STEAM NAVIGATION CO. (limited),
14 THE ALBANY OLD HALL STREET,
LIVERPOOL, 2*d July*, 1867.

SIR: The directors have, for some time past, had under their consideration the inconvertibility of the shares of this company, and they have ascertained that the reluctance of capitalists to invest in them arises chiefly from the large contingent liability of unpaid calls.

The shares are £100 each, on which £30 has been paid, and it is not the intention of the directors to make any further call unless the same should be necessary for the purpose of discharging the debenture debt of the company, amounting to about £150,000.

The directors therefore, having conferred with some of the largest shareholders, have devised a plan for reconstructing the National Steam Navigation Company, Limited, whereby, whilst providing for the payment of the debentures, the liability of the shareholders
9 will be reduced in respect of unpaid calls from £70 to £10 per share.

The directors have registered a new company under the name of the Steam Ship Company, limited, but it is intended to change this name to the National Steamship Company, Limited, as soon as the proposed arrangements are carried through, and the old company dissolved. A technical difficulty in the register's office prevents the adoption of the name "National," until the completion af these arrangements. The new company has a capital of £1,000,000 in 100,000 shares of £10 each; of these 75,000 will be designated "original shares," and 25,000 will be preferential shares.

Of the original shares, 60,000 will be issued to the shareholders of the National Steam Navigation Company, Limited, in exchange for the certificates of the present shares, namely: Three shares in the new company for one share in the old company, such original shares being shares of £10 each, fully paid up. There will also be issued in respect of the same £100 shares one preferential share of £10.

The directors will not make calls on these preferential shares beyond 100 a share, except in case of necessity, but, at the same time, permission will be given to any shareholder to make voluntary payments on such preferential shares to the extent, inclusive of calls of £5 a share, and on any such voluntary payments interest will be paid at the rate £8 per centum per annum, on the amount, which will be called up in respect of such preferential shares. The members will receive a preferential dividend out of present or future profits at the rate of £8 per centum per annum, and will also participate in any larger dividend, payable on the original shares.

These preferential shares will also have a preferential claim on the assets of the company in priority to the ordinary shares.

10 The directors trust the advantages offered by this plan will be at once perceived by the shareholders, but they consider it right to say that they will not feel justified in proceeding with the plan unless almost unanimously supported by the shareholders. If this be not the case, the large liabilty of £70 for future calls will still remain, rendering the shares nearly unsaleable; whereas the new shares of £10 each, with no liabilty, will always have a current value in the market. The directors therefore, annex form of application for shares which you will please sign and return to the secretary of the company.

I am, sir, your obedient servant,

WILLIAM ROME, *Chairman.*

Form of Application.

To the Steam Ship Company, limited.

As a registered holder of shares in the National Steam Navigation Company, Limited, on which calls to the extent of £30 per share have been paid, I hereby claim the privilege of becoming a shareholder in the Steam Ship Company, Limited, to the extent of original shares of £10 each, fully paid up, and preferential shares of £10 each, in exchange for £100 shares which I hold in the National Steam Navigation Company, Limited. And I hereby request and authorize you to allot me such shares, and to place my name upon your register of members in respect thereof, and I agree to take the said number of original and preferential shares, and after my name shall be placed on the register of the Steam Ship Company, limited, as a member in respect of £10 original shares and preferential shares I agree to surrender my £100 shares in the National Steam Navigation Company, limited, to that Company

11 or to such persons as they may appoint for receiving a surrender of the same.

Name in full.
Usual signature.
Address.
Occupation.
Date.

And whereas on the ninth July, one thousand eight hundred and sixty-seven, the said National Steam Navigation Company, Limited, duly passed, in conformity with the provisions of the companies act, 1862, a special resolution in the words and figures following, that is to say: *Resolved*, That the company be wound up voluntarily as and from the 15th day of August, 1867; and that William Rome and Charles Edward Dixon, both of Liverpool aforesaid, merchants, be appointed liquidators for the purpose of winding up the affairs of the company and distributing the property, and it having been stated to this meeting that a new company, called the Steamsnip Company, Limited, has been duly formed and registered, with a capital of £1,000,000 divided into 75,000 shares of £10 each, and

25,000 preferential shares of £10 each, and that it is proposed to transfer to such new company the whole of the business and property of this company, in consideration of the new company allotting 60,000 shares in the new company credited with £10 per share paid for the purpose of distribution amongst the members of this company or otherwise for the benefit of this company, and assuming all the liabilities of this company, and also making provision for all matters which may arise in the liquidation of this company, that the proposed transfer be and the same is hereby approved, and that an authority be, and the same is hereby conferred on the liquidators of this company to accept such 60,000 shares in the said new company, each credited with £10 as paid-up thereon, for the purpose of distribution amongst the members of and for the benefit of this company.

12 *And whereas* the said National Steam Ship Company, Limited, has been incorporated under the provisions of the companies act, 1862, with a memorandum and articles of association, from which the following are extracts:

Memorandum of Association.

1. The name of the company is the Steam Ship Company, Limited.
2. The registered office of the company will be situate in England.
3. The objects for which the company is established are the following, namely: the purchasing and taking over, for the sum of £600,000 in paid-up shares of this company of £10 each, all the business, ships or assets, subject to such liabilities of the National Steam Navigation Company, Limited, and also the building, purchasing, hiring, sailing and managing, and also the re-selling and letting out to hire of ships or vessels of iron or wood of every description, and also the purchasing of any goods and merchandises [as cargo or ballast for any such ships or vessels in any trade, home or foreign, and the re-selling all and any such goods and merchandises] and the transferring, transposing and re-investing of the proceeds of such ships or vessels, goods or merchandises in manner aforesaid, also the granting or effecting loans on any ships or on any goods or merchandise carried or to be carried in such ships, and also the borrowing of moneys on loan on any ships or goods or merchandiees belonging to the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects.
4. The liability of the members is limited.
5. The capital of the company is £1,000,000, divided as follows, namely, into seventy-five thousand shares of ten pounds each, and twenty-five thousand preferential shares of ten pounds each.

13 *Business.*

4. This company is established for the purpose of purchasing and taking over the business and assets of the National Steam Navigation Company, Limited, subject to the payment of all its existing liabilities, on the terms that there be allotted to each and every member of the said National Steam Navigation Company, Limited, or to his nominee, in respect of every share held by every such mem-

ber in the said last mentioned company, three shares in this company of ten pounds, fully paid up, and that there be also offered to each and every such member, in respect of each and every share so held by him, as aforesaid, a preferential share of ten pounds, in respect of which the sum of ten shillings shall be paid by such member on the allotment and acceptance by him of such preferential shares.

The Capital.

The capital of the company shall consist of £1,000,000, divided into one hundred thousand shares of ten pounds each, seventy-five thousand of which shall be called original shares and twenty-five thousand shall be called preferential shares. Sixty thousand of these original shares shall be offered at par as fully paid up shares; so that three of such original shares shall be offered to the holder of each share of one hundred pounds, on which thirty pounds has been paid up in the National Steam Navigation Company, Limited, in exchange for each such share, and the remaining fifteen thousand original shares and five thousand preferential shares shall be issued only under the circumstances hereinafter mentioned. The directors shall, in the first instance, offer twenty thousand of the preferential shares *pro rata* to such holders of shares in the National Steam Navigation Company, Limited, as shall agree to exchange their shares into fully paid up shares in this company; but in case any of the members of the said National Steam Navigation Company, Limited,
14 shall decline to receive the same, or shall neglect to accept the same within seven days after the same shall have been offered to them, then the directors shall issue such remaining shares from time to time, to such persons as they may think fit.

It shall be lawful for the directors to issue any portion of the remaining fifteen thousand original shares, and five thousand preferential shares, for the purpose of enabling them or the National Steam Navigation Company, Limited, to carry out a contract entered into on the eighteenth April, one thousand eight hundred and sixty-six, and made between the British and American Steam Navigation Company, Limited, and William James Fernie, Henry Fernie and David Fernie, trading under the firm of Fernie Brothers and Company, of Liverpool, in the county of Lancaster, of the one part, and the National Steam Navigation Company, Limited, of the other part, if they shall deem it expedient so to do, provided that one preferential share be offered to each holder of three of the remaining fifteen thousand original shares.

10. The said preferential shares shall bear and receive a preferential dividend of eight pounds per centum per annum on the amount paid upon such shares respectively in priority to any dividend payable on the original shares, but in case the profits of the company shall be sufficient to enable the payment of a dividend on the said original shares of more than eight pounds per centum per annum, then the holders of such preferential shares shall be entitled to receive a dividend in respect of the amount paid on such preferential shares respectively at the same rate as the dividend declared on the

ordinary shares; but in case the profits of the company shall be insufficient in any one year to pay a dividend of eight pounds per centum on the respective accounts paid up, in respect of the said preferential shares, then such dividend shall be made good to the holders of preferential shares out of the profits of any succeeding year or years before any dividend shall be payable or be paid to the holders of original shares.

15 In case the said company shall discontinue its business and wind up its affairs, the holders of preferential shares shall be entitled to a first charge to the extent of the amount paid up on their shares respectively, and any arrear of dividends thereon on the assets of the company then existing after satisfying the debts and liabilities of the company.

Calls.

No further calls shall be made in respect of the original ten-pound shares, but as regards the preferential shares of ten pounds, ten shillings shall be paid by each member on all shares allotted to him immediately on allotment, if not already paid on application. The directors may, at any time thereafter, make such calls, not exceeding two pounds at any one time, on the said preferential shares in respect of all moneys unpaid in respect of such shares as the directors may think fit; provided that one month's notice, at least, be given of each call, and that no call after the first be made payable within three months from the day upon which the call immediately preceeding shall have been made payable, and each shareholder shall pay the amount of calls so made to the persons and at the times and places appointed by the directors; but, in case the company shall be dissolved or wound up, the amount remaining due on any share, or so much thereof as shall be necessary to discharge the claims on the company and the expense of winding up, shall become immediately payable.

71. The following gentlemen shall, on their respectively signing these presents and being duly qualified, be the first directors of the company: William Rome, Charles Edward Dixon, James George Robinson, Thomas Wilkinson Tetly, Robert Maxwell, Joseph Neal McKenna, and Thomas Henry Ismay; and they shall meet together as often as they shall consider requisite for transacting the business of the company, and three of the directors shall constitute a

16 quorum. It shall be lawful for the directors, at a meeting of the board specially called for that purpose, to appoint either one of their number or any other person to be managing director of the said company for such time and on such terms and salary as they shall think fit; and such managing director shall hold either two hundred shares or any other number of shares as the directors for the time being may think fit. And it shall be lawful for the board of directors at any time and from time to time, by a meeting specially called for the purpose, to displace and remove such managing director and to elect another of their body in his place, and every managing director so removed shall be entitled to the payment of his salary *pro rata* up to the time of his removal: *Provided always,*

That the directors shall not borrow more than £150,000 on debentures in the whole without the assent of a majority of at least two-thirds in number of the shareholders present, at an extraordinary meeting of the company, as specified in the sixty-second clause of these presents; but it is expressly understood and agreed that the directors shall have power in their own discretion to borrow any sum or sums of money, not exceeding in the aggregate the sum of one hundred and fifty thousand pounds, on debentures without any consent of the company or of any of the shareholders. And whereas the assets and property of the National Steam Navigation Company, Limited, consist of certain ships, stores, securities, and moneys, and of certain outstanding claims, all of which are disclosed by the books, papers, and documents of the said last-mentioned company; and such books, papers, and documents have been laid before the said parties hereto of the second and third parts respectively. And whereas there are also certain liabilities of the said National Steam Navigation Company, also disclosed by the same books, papers, and documents as the same have been laid before the said parties hereto of the second and third parts respectively. And whereas by special resolution the said Steamship Company, Limited, has changed its name, and now is the "National Steam-Ship Company, Limited." And
17 whereas, for the purpose of evidencing the arrangement to be effectuated between and by the said liquidators and the said National Steam Ship Company, Limited, in pursuance and by virtue of the said recited special resolution and regulations, the parties hereto have agreed to join in these presents in manner hereinafter appearing. Now, these presents witness that in pursuance and by virtue of the said special resolution and regulations, and in consideration of the premises and of the covenants on the part of the other parties hereto respectively hereinafter contained, the National Steam Navigation Company, Limited, so far as the covenants hereinafter contained are to be observed and performed by the said National Steam Navigation Company, Limited, and by the liquidators thereof, do hereby, for themselves, their successors, and assigns (by and with the consent of the said liquidators, testified by their being parties to and executing these presents), covenant with the said National Steam Ship Company, Limited, their successors and assigns. And the said National Steam Ship Company, limited, do hereby, for themselves, their successors, and assigns, covenant with the said National Steam Navigation Company, Limited, and also as a separate covenant with the said liquidators, their executors, and administrators, so far as the said respective covenants are to be by the said several parties respectively observed and performed in manner following, that is to say:

1. The National Steam Navigation Company, Limited, and their liquidators will forthwith, or as soon as conveniently may be, after the execution of these presents, by such means, deeds, acts, and assurances, and with such consents as may be necessary or expedient in that behalf, convey, assign, release, transfer, pay, deliver, and make over, or procure to be conveyed, assigned, released, transferred paid, delivered, and made over to the National Steamship Company,

Limited, or to such person or persons, body or bodies, as the said last mentioned company may require or direct, all such real
18 and personal property, of what nature or kind soever, whether corporeal or incorporeal, and whether in possession, reversion, or in action capable of assignment and transfer as are comprised in or make up or pertain to the several items appearing under the head of assets in the said books, papers, and documents so laid before the said parties hereto of the second and third parts respectively, as aforesaid, and which books, papers, and documents it is hereby agreed shall be given up to the said National Steamship Company, Limited.

2. *Provided always*, That the National Steam Ship Company shall take to and accept such real and personal property subject to the several rights and equities therein subsisting, and in particular to the discharge of the several liabilities appearing in the said books, papers, and documents of the said National Steam Navigation Company, Limited, so agreed to be given up as aforesaid, and to all other liabilities (if any) of the National Steam Navigation Company, to which the said real and personal property is now subject.

3. As to such parts of the said real and personal property as shall not be capable of assignment, the National Steam Navigation Company, Limited, and their liquidators, will stand seized and possessed of the same, in trust for the National Steam Ship Company, Limited, and their successors, and to be dealt with as the National Steam Ship Company, Limited, may from time to time direct.

5. The said real and personal property so agreed to be conveyed, transferred, and assigned as aforesaid shall, subject to said debts and liabilities of the National Steam Navigation Company, Limited, and subject to the rights and equities affecting the said property, be held by the said National Steam Ship Company, Limited, subject to the primary obligation of discharging the following liabilities:
19 (*a.*) All costs, charges and expenses of and connected with the dissolution and winding up of the National Steam Navigation Company, Limited, and all other liabilities incurred or to be incurred by the said liquidators in their office of liquidators.

(*b.*) All moneys necessary for the purchase of any interest or interests held by any person or persons, body or bodies, who, as a dissentient members or as dissentient members of the National Steam Navigation Company, Limited, shall be entitled to have his, her or their interest or interests purchased in manner in the companies' act, 1862, mentioned.

(*c.*) All moneys, if any, which the liquidators may pay in pursuance of any arrangement or compromise with any of the members of the said National Steam Navigation Company, Limited, and subject to the aforesaid payments for the benefit of the said National Steam Ship Company, Limited, their successors and assigns.

7. The National Steam Ship Company, Limited, will allot to the liquidators, or to such persons as they shall from time to time nominate or direct, so many and such shares of the National Steam Ship Company, Limited, of ten pounds each, credited with ten pounds paid, as will enable the said liquidators to carry out the ar-

rangements proposed to the members of the National Steam Navigation Company, Limited, in the circular letter of the second day of July last hereinbefore set out; and such last mentined shares shall carry with them such and so many preferential shares as may be required by the said liquidators or their nominees to carry out and complete the said arrangement.

8. The liquidators will allot or direct to be alloted by the
20 National Steam Ship Company, Limited, the said shares, together with the said preferential shares, to the members of the National Steam Navigation Company, Limited, whose names appeared on the register of that company on the fifteenth day of August instant, willing to accept the same in the proportion of three shares of ten pounds each, fully paid up, and one preferential share of ten pounds in the National Steam Ship Company, Limited, for one share of one hundred pounds in the National Steam Navigation Company, Limited, with thirty pounds paid up.

9. In the event of it becoming necessary or expedient to purchase the interest or interests of any dissentient member or members of the National Steam Navigation Company, Limited, and whether at a price to be determined in manner in the "companies' act 1862," mentioned or otherwise, the liquidators shall do all things necessary for the ascertainment, raising and payment of such price, and for that purpose and in that behalf shall hold, deal with, and dispose of the share or shares in the National Steam Ship Company, Limited, to which such dissentient member or members would, but for his dissent, be entitled, and shall otherwise act in relation to the premises in full accord with the said National Steam Ship Company, Limited, and in such manner as shall be mutually agreed on between and by such National Steam Ship Company, Limited, and the liquidators.

10. The National Steam Ship Company, Limited, will bear, pay and discharge in due course the several liabilities disclosed in the said books, papers and documents aforesaid, and all other debts, if any of the said National Steam Navigation Company, Limited, and will devote and apply the real and personal property so to be made over to them to that purpose.

11. The National Steam Ship Company, Limited, will save harmless and keep indemnified the liquidators and each of them, their and each of their heirs, executors, administrator's estate and effects,
of, from and against all liabilities and the consequences in-
21 curred or to be incurred by them by virtue of their office and in their capacity as such liquidators as aforesaid.

12. If any doubt, difference, or dispute shall arise between the parties touching these presents, or the construction hereof, or any clause herein contained, or any account, valuation, assets, debts, liabilities, or any other thing in any wise relating to or concerning the affairs, rights, duties, and liabilities of the liquidators, and the said National Steam Ship Company, Limited, or either of them, or in connection therewith, the matter in difference shall be referred to the two arbitrators or their umpire, pursuant to and so as with regard to the mode and consequence of the reference, and in all other respects to conform to the provisions in that behalf contained in the

Common Law Procedure Act, 1854, or any then existing statutory modification thereof.

In witness whereof, the said companies and the said parties hereto have hereunto set their hands and seals respectively.

The seal of the National Steam Navigation Company, Limited, was hereto affixed by William Rome and Charles Edward Dixon, the liquidators thereof. [L. S.]

W. ROME. W. ROME.
C. E. DIXON. C. E. DIXON.

The seal of the National Steam Ship Company, Limited, was hereto affixed in the presence of two of the directors— [L. S.]

J. G. ROBINSON,
THOS. H. ISMAY.

EDW'D K. HAYWARD,
Secretary.

22 SCHEDULE B.

The People of the State of New York to Rebecca Gray, of Brielzston, Bucks county, Pennsylvania, the widow of Wilson W. Gray, late of Brielzston, Bucks county, Pennsylvania, deceased, send greeting:

Whereas said Wilson W. Gray lately departed this life intestate, not being at or immediately previous to his death an inhabitant of the county of New York, but leaving assets therein, by means whereof the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said intestate died possessed, in the State of New York, and also the auditing, allowing, and final discharging the amount thereof, doth appertain unto us, and we being desirous that the goods, chattles, and credits of the said intestate may be well and faithfully administered, applied, and disposed of, do grant unto you, the said Rebecca Gray, full power by these presents to administer and faithfully dispose of all and singular the said goods, chattels, and the credits, ask, demand, recover, and receive the debts which unto the said intestate whilst living and at the time of his death did belong, and to pay the debts which the said intestate did owe, as far as such goods, chattels, and credits will thereunto extend and the law require, hereby requiring you to make, or caused to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said intestate, within a reasonable time, and return a duplicate thereof to our surrogate of the county of New York within three months from the date of these presents, and if further personal property or assets of any kind not mentioned in any inventory that shall have been so made shall come to your possession or knowledge to make or cause to be made in like manner a true and perfect inventory thereof, and return the same within two months after
23 the discovery thereof, and also to render a just and true account of administrations when thereunto required, and we do, by these presents, depute, constitute, and appoint you, the said Rebecca Gray, administratrix of all and singular the goods, chattels, and credits of the said Wilson W. Gray, deceased.

In testimony whereof we have caused the seal of office of the surrogate of said county to be hereunto affixed.

Witness, Gideon J. Tucker, Esq., surrogate of said county at the city of New York, the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

GIDEON. J. TUCKER,
Surrogate.

STATE AND COUNTY OF NEW YORK, } ss.
Surrogate's Office. }

I, Peter V. Burtsell, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the letters of administration granted upon the estate of Wilson W. Gray, deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of said original record.

In testimony whereof I have hereunto set my hand and the seal of the office of the said surrogate, this sixth day of June, 1878.

[S. L.] PETER V. BURTSELL.

SCHEDULE C.

Assignment of Judgment.

This indenture, made the 11th day of December, one thousand eight hundred and sixty-nine, between Rebecca Gray, administratrix, &c., of Wilson W. Gray, deceased, of Bucks county, State
24 of Pennsylvania, party of the first part, and Asa F. Miller, of the second part, witnesseth:

Whereas the said party of the first part on the 23d day of June, one thousand eight hundred and sixty-eight, recovered a judgment in the superior court of the city of New York against the National Steam Navigation Company for three thousand two hundred and eighty-nine 5-100 dollars.

Now this indenture witnesseth that the said party of the first part, in consideration of twelve hundred and fifty dollars, to her duly paid, has sold, and by these presents does assign, transfer and set over unto the said part of the second part, and assigns, the said judgment, and all sum and sums of money that may be had or obtained by means thereof or on any proceedings to be had thereupon. And the said party of the first part does hereby constitute and appoint the said party of the second part and his assigns her true and lawful attorney irrevocable, with power of substitution and revocation, for the use, and at the proper costs and charges of the said party of the second part to ask, demand and receive and to sue out executions and take all lawful ways for the recovery of the money due or to become due on the said judgment: and on payment to acknowledge satisfaction, or discharge the same. And attorneys one or more under for the purpose aforesaid, to make and substitute, and at pleasure to revoke, hereby ratifying and confirming all that said attorney or substitute shall lawfully do in the premises. And the said party of the first part does covenant that there

is now due on the said judgment the sum of three thousand two hundred and eighty-nine 5-100 dollars, and that she will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises. In witness whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

REBECCA GRAY.

Sealed and delivered in the presence of—
[L. S.] JOHN LIPHERD.
JAS. M. CARVER.

STATE OF PENNSYLVANIA, }
Bucks County, } *ss:*

On this 11th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, before me, James M. Carver, justice of the peace, being an officer of said State authorized by the laws thereof to take the proof and acknowledgment of deeds, and residing in said county of Bucks, personally came Rebecca Gray, to me known to be the individual described in and who executed the within assignment, and acknowledged that she executed the same for the purposes therein mentioned.

Witness my hand and seal the day and year first above written.
[L. S.] JAMES M. CARVER.

STATE OF PENNSYLVANIA, }
Bucks County, } *ss:*

I, W. H. Cook, prothonotary of the court of common pleas, in and for said county, do hereby certify that James M. Carver, before whom the foregoing acknowledgment was taken, is and was at the time of the taking thereof duly authorized to take the same, and is and was at said last-mentioned time an officer of the State of Pennsylvania, duly authorized to take the proof and acknowledgment of deeds, and that I am well acquainted with the handwriting of the said James M. Carver, and verily believe that the signature to said certificate of acknowledgment is genuine, and that said court of common pleas is a court of record having general jurisdiction.

In witness whereof, I have hereunto affixed my signature and the seal of said court, at Doylestown, this fourteenth day of December, in the year eighteen hundred and sixty-nine.

[L. S.] W. H. COOK,
Prothonotary.

SCHEDULE D.

Henry Morrison, of the city of New York, having advanced and paid the sum of $1,250, the amount expressed in the consideration of the assignment of Rebecca Gray, administratrix of Wilson W.

Gray, deceased, to me, the subscriber, Asa F. Miller, of the judgment obtained by her against The National Steam Navigation Company on or about the eighth day of June, 1868, in the superior court of the city of New York, for the sum of about $3,280, and the said sum of $1,250 having been duly paid to the attorneys of the said Rebecca Gray as administratrix aforesaid, and it being intended by the said Henry Morrison that a further accounting to her should be made in the event of a successful result of the action against The National Steamship Company now pending, and in which I am plaintiff by virtue of said assignment in consideration of value received, I do, therefore, hereby assign, transfer, and set over to him, said Henry Morrison, all my right, title, and interest in the said action now pending, in which I am plaintiff against the said The National Steamship Company now on appeal to the general term of the supreme court, and also all my right, title, and interest in said judgment so as aforesaid to me assigned by Rebecca Gray, as administratrix aforesaid.

Witness my hand and seal, this seventh day of January, 1874.

[L. S.] A. F. MILLER.

27 STATE, CITY, AND COUNTY OF NEW YORK, *ss.:*

On this seventh day of January, 1874, before me came Asa F. Miller, to me known to be the person mentioned and described in the within instrument, and who acknowledges to me that he executed the same for the uses and purposes therein mentioned.

A. H. ADAMS,
Notary Public, New York County.

SCHEDULE E.

Assignment of Judgment.

This indenture, made the sixteenth day of February, one thousand eight and seventy-seven, between Henry Morrison, of the city of New York, party of the first part, and Rebecca Gray, administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, of Bucks county, and State of Pennsylvania, party of the second part, witnesseth:

Whereas the said party of the second part, on the 23d day of June, in the year one thousand eight hundred and sixty-eight, recovered by judgment in the superior court of the city of New York, against the National Steam Navigation Company, for the sum of three thousand two hundred and eighty-nine dollars and five cents, and whereas the said party of the second part heretofore assigned said judgment to one Asa F. Miller, of the city of New York, and whereas said Miller thereafter assigned said judgment to the said party of the first part.

Now, this indenture witnesseth that the said party of the first part, in consideration of value received and fifty dollars to him duly paid, has sold, and by these presents does assign, transfer, and set over to the said party of the second part and her assigns or suc-

28 cessors, the said judgment and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon.

And the said party of the first part does hereby constitute and appoint the said party of the second part, and her assigns, or successors, his true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment, to acknowledge satisfaction, or discharge the same. And attorneys one or more under her for the purpose aforesaid, to make and substitue, and at pleasure to revoke, hereby ratifying and confirming all that her said attorney or substitute shall lawfully do in the premises.

And the said party of the first part doth covenant that there is now due on the said judgment the sum of three thousand and eighty-nine dollars and five cents, and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of first part harmless of and from any costs in the premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

Sealed and delivered in the presence of—

H. MORRISON.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On this sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-seven, before me personally came Henry Morrison, to me known to be the individual described in and who executed the within assignment, who to me acknowledged that he executed the same.

GEORGE W. VULTEE,
Notary Public (37), *City and County of New York.*

SCHEDULE F.

Return of final winding-up meeting of the National Steam Navigation Company, Limited.

To the registrar of joint stock companies:

I have to inform you that a meeting of the National Steam Navgation Company, Limited, was duly held on the eleventh day of July, 1870, for the purpose of having an account laid before them showing the manner in which the winding-up of the company has been conducted and the property of the company disposed of, and that the same was done accordingly.

(Signatures,)

W. ROME,
C. E. DIXON,
Liquidators.

Dated the twelfth day of July, 1870.

"The companies' act 1862," 25 *and* 26 *Vict., C.* 89.

Return of final winding-up meeting of the National Steam Navigation Company, Limited, pursuant to sections 142 and 143

SCHEDULE G.

At a special term of the supreme court of New York, held at the chambers of the justices thereof, at the courthouse, in the city of New York, the 5th day of May, 1876.

Present: Hon. Abraham R. Lawrence, J.

30 ASA F. MILLER *against* THE NATIONAL STEAMSHIP COMPANY.

On reading the consent of the respective parties herein, it is hereby ordered and allowed that the above entitled action be and the same is hereby discontinued without costs to either party.

A copy. HENRY A. GUMBLETON, *Clerk.*

STATE OF NEW YORK, }
City and County of New York. } *ss.*

I, Henry A. Gumbleton, clerk of said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original order on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 7th day of June, 1878.

[L. S.] HENRY A. GUMBLETON, *Clerk.*

31 Circuit Court of the United States for the Southern district of New York, in the Second Circuit.

REBECCA GRAY, Administratrix, &c., WILSON W. GRAY, Deceased,

against

THE NATIONAL STEAM SHIP COMPANY.

The answer of the National Steamship Company, defendant to the bill of complaint of Rebecca Gray, administratrix of the goods, chattels and credits which were of Wilson W. Gray, deceased. These defendants now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in said complainant's said bill of complaint, contained for answer thereto, or unto so much and such costs thereof as these defendants are advised, are material for them to make answer, unto answering say:

That about the sixteenth day of August, eighteen hundred and sixty-seven, the National Steam Navigation Company, a company created under the act of Parliament of the United Kingdoms of Great Britain and Ireland, commonly known as "The Companies' Act, 1862," entered into an agreement with these defendants, but that the

same is imperfectly and incompletely set forth in the Schedule A, annexed to the complainant's bill of complaint.

That many of the directors and officers of the said National
32 Steam Navigation Company became the officers and directors of these defendants, a corporation created and existing under said act of Parliament, commonly known as "The Companies' Act, 1862."

That these defendants have no evidence that administration upon the estate of said Wilson W. Gray, deceased, was granted to Rebecca Gray, other than the allegations in complainant's said bill and the copy of such letters as purported so to be in Schedule B to the said bill of complainant annexed, and pray that complainant may be required to make due proof of her authority as such administratrix.

That at or about the time mentioned in the bill of complaint a judgment for about the amount mentioned in the complaint was obtained by the complainant in the superior court of the city of New York against the National Steam Navigation Company, but of the various assignments of the same, and whether the same is now vested in the complainant, these defendants have no knowledge, and therefore deny the allegations in that behalf in complainant's bill contained.

That these defendants believe that an execution on said judgment was issued to the sheriff of the city and county of New York and returned unsatisfied.

These defendants allege that on the sixteenth day of August, eighteen hundred and sixty-seven, the National Steam Navigation Company sold, conveyed, assigned, released, and delivered and made over to these defendants all its real and personal property, of what nature or kind soever, for a full consideration by these defendants honestly and fairly paid. That at that time these defendants became the true and lawful owners of all said property, real and personal, including the steamships The Queen, Denmark, England, Helvetia, Erin, Pennsylvania, Virginia and Louisiana. That they have ever since said sixteenth day of August, eighteen hundred and sixty-seven, continued to be the sole owners of said steamships, but have since then rebuilt at a large outlay the Pennsylvania,
33 and named her the Canada; the Virginia, and named her the Greece; the Louisiana, and named her the Holland.

These defendants deny a transfer or disposition of property by the National Steam Navigation Company to these defendants at the time when or in the manner alleged in the complaint, or that said company ever made any transfer or disposition to these defendants of any property in fraud of the rights of the complainant.

These defendants deny that at the time of the recovery of the judgment set forth in the bill of complaint, or at the time of issuing execution thereon, or of the return thereof, the National Steam Navigation Company were the owners of the steamships mentioned in the complaint, or of any of them; and they reiterate their allegations that, long before the earlier of said dates, the said National Steam Navigation Company had sold and delivered to these defendants, by good and sufficient instruments, all the said steamships,

and that long anterior to said earliest date these defendants became and were, and continued the sole owners of each and every of said steamships, and that, long before the earliest of those dates, said National Steam Navigation Company had ceased to be the owners of either of said steamships.

These defendants admit that, from the sixteenth day of August, eighteen hundred and sixty seven, the National Steam Navigation Company were going through the process of winding-up, under the said act, known as "The Companies' Act of 1862."

These defendants have no knowledge of the action set forth in the bill of complaint, and purporting to be copied in Schedule F, otherwise than the allegation in that behalf in the bill of complaint contained.

These defendants admit that an action was brought in equity in the supreme court of the State of New York by one Asa F. Miller, as assignee of the identical cause of action set forth in the complainant's bill; but they allege that the merits were tried in
34 said action, and that these defendants, sole defendants therein, had an absolute judgment in their favor in said action, which was affirmed on appeal at the general term of said supreme court, absolutely and entirely, and has never in any way been appealed from, reversed or set aside; and these defendants allege that by said judgments the cause of action set forth in the bill of complaint has been finally and absolutely disposed of, and that the same is *res adjudicata* as between the complainant and these defendants; and these defendants allege that the order of discontinuance set forth in the complainant's bill in no way affects the finality of said judgments, especially the said judgment of the general term of the supreme court of the State of New York.

These defendants admit their refusal to pay the said judgment of the superior court, and that they have kept possession of or disposed of, as to them seemed best, the property honestly sold and delivered to them by the said National Steam Navigation Company; but they deny that such action on their part has been in any way in fraud of any right of the complainant, or that the complainant has any right to have said judgment paid by these defendants, or out of any of the property sold or delivered to them by the National Steam Navigation Company.

Defendants admit that all the property of the National Steam Navigation Company was sold and delivered to these defendants, but deny any right or equity in the complainant to reach said property or its proceeds, or that any part thereof is applicable to the payment of the said judgment in the superior court.

These defendants, further answering, allege that the complainant filed her libel in the United States district court for the southern district of New York, in admiralty sitting, against the steamship Pennsylvania. That in said libel she set forth as her cause of action the identical collision between the said steamship and a canal boat belonging to her intestate, which was set forth in her
35 complaint in the superior court in the action therein brought, and was the foundation thereof. That she claimed in such

libel that such collision was the fault of the Pennsylvania and of those in charge of her. That said steamship was seized under process issued in such admiralty suit, and these defendants, as owners of said steamship, appeared, claimed and bonded said vessel and answered said libel, denying any fault on the part of said steamship or those in charge thereof. That such suit was tried on the merits, and such proceedings were therein had, that, on the twenty-sixth day of April, eighteen hundred and sixty-nine, a judgment of the said district court was therein entered in favor of these defendants, as owners of said steamship, upon the merits of the case. That this complainant appealed from the said judgment to the circuit court of the United States for the southern district of New York, in the second circuit, and on such appeal and the trial of said suit in said circuit court a judgment was likewise entered, on the eighteenth day of January, eighteen hundred and seventy-three, in favor of these defendants and against this complainant, upon the merits and affirmance of the said judgment of the said district court, which said judgment still stands, and has never been appealed from.

And these defendants deny all and all manner of unlawful combination and confederacy with which they are charged in the said bill without this; that there is any other matter, cause or thing in said complainant's bill contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is not true to the knowledge of these defendants or their belief, all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall
36 direct, and humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

THE NATIONAL STEAMSHIP CO.,
Per F. W. J. HURST,
Managing Agent.
JOHN CHETWOOD,
Solicitors for Defendants.

STATE OF NEW YORK, } ss:
Southern district of New York. }

Francis W. J. Hurst, being duly sworn, does depose and say that he is the managing agent in the United States of the National Steamship Company, the corporation named as defendants in the above answer, and that, by means of his said office, he has acquired and possesses particular knowledge of the matters stated in said answer; that he has read the same, and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Subscribed and sworn to before me this thirty-first day of July, 1878.

[L. S.]

ADAM GOSS,
Notary Public, New York County.

37 United States Circuit Court for the Southern District of New York, in the Second Circuit.

REBECCA GRAY, Administratrix of the goods, chattels, and effects which were of Wilson W. Gray, Deceased,
against
THE NATIONAL STEAMSHIP COMPANY.

The replication of Rebecca Gray, administratrix of the goods, chattels, and effects which were of Wilson W. Cray, deceased, complainant, to the answer of the National Steamship Company.

The repliant, saving and reserving unto herself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold errors of the said answer, for replication thereunto, says that she will aver, maintain, and prove her said complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true.

All of which matters and thinge this repliant is and will
38 be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said complaint she has already prayed.

LAUTERBACH & SPINGARN,
Plaintiff's Solicitors.

United States Circuit Court, Southern District of New York.

REBECCA GRAY, Administratrix, &c.,
vs.
THE NATIONAL STEAMSHIP COMPANY.

NEW YORK, *November* 17, 1879.

Present: Henry Morrison, Esq., on part of the complainant, and John Chetwood, Esq., on part of defendant.

Testimony taken before John A. Shields, a standing examiner, under and pursuant to the sixty-seventh rule of the Supreme Court of the United States, as amended, on the part of the complainant.

Counsel for the complainant offers in evidence letters of administration marked Schedule B, and annexed to the bill of complaint on file in this case, and sundry mesne assignments annexed to the bill of complaint and their acknowledgments and certificates by the prothonotary of the court of common pleas in and for the
39 county of Bucks, State of Pennsylvania, as to the acknowledgment of James L. Carver; and also an assignment of Asa F. Miller, marked Schedule D, and annexed to the bill of complaint

and the acknowledgment; also the assignment of Henry Morrison, marked Schedule E, and annexed to the bill of complaint and the acknowledgments thereof.

Counsel for the defendant objects to the introduction of these papers, as incompetent and improperly proven, and that the same should be proven by the subscribing witnesses as the parties thereto.

Counsel for the complainant offers in evidence Schedule G, order of discontinuance annexed to the complaint and exemplification thereto.

Counsel for defendants objects to the introduction of Schedule G, as immaterial and irrelevant and incompetent.

Counsel calls Henry Morrison.

HENRY MORRISON, being called and sworn as a witness on the part of the complainant, deposes and says:

That in London, England, on or about the 6th or 7th of October, 1875, I was in the office of the registrar of Joint Stock Companies; whether there I had obtained the paper Schedule F, or prior to being there obtained it, I do not recollect; I compared it with the original, and I know it to be a true copy of the original; I am acquainted with the handwriting of Rebecca Gray, the plaintiff, and believe "Rebecca Gray" to the signature of Exhibit C is her handwriting; John Sipherd and James Marver, the subscribing witnesses, are residents of Pennsylvania, and they are not within the State of New York to my knowledge; there is no locality or place in New York that I can have access to them or find them to my knowledge; I have no knowledge of the handwriting of Marver; I am familiar with and have a knowledge of the handwriting of John Sipherd, and I believe that to be his signature as subscribing witness; Miller signed Schedule D in my presence; Schedule E I signed and acknowledged; Miller made the acknowledgment to his assignment in my presence.

Counsel for the defendant objects to the admission in evidence of the copy of the certificate of the registrar of the Joint Stock Company, Schedule F, annexed to the bill, as incompetent and because the same is not sufficiently proven.

Cross-examined:

1 Q. How do you know the handwriting of John Sipherd, subscribing witness to Schedule C?

A. I have received letters from him, that is, letters written by him, which I hold in my hand; I saw the man in Philadelphia, at Mrs. Gray's residence in the fall of 1875 or winter of 1876; I subsequently saw him at my office on Washington's birthday or Thanksgiving day or some public holiday; the second time he accompanied Mrs. Gray to my office; those were the only times I saw him; I have seen him write; I hold the signature that I saw him write in my hand.

2 Q. You say that you don't know that you ever wrote to him?

A. I never wrote to him personally; I wrote to Mrs. Gray while he was domiciled with her, and the answers came back from him in his handwriting.

Objected to, as irresponsive and impertinent.

3 Q. Have you any knowledge of his present residence?

A. As a correspondent I received letters in his handwriting from Pennsylvania.

4 Q. What was the date of the last letter you received?

A. Dec. 16, 1879.

41 5 Q. when did you receive it?

A. I have not the envelope to that letter, but, from other envelopes I have of other correspondence from him and Mrs. Gray, it should have been the following day.

6 Q. What consideration did you receive for the assignment of Schedule E?

A. Fifty dollars.

7 Q. Was that fifty dollars paid to you in cash by Mrs. Gray, and actually retained by you?

A. Yes; there was also an understanding, which is in this agreement I now produce.

Said agreement is offered in evidence, and marked "Plaintiff's Ex. No. 1. J. A. G., Ex'r. November 17, 1879."

Counsel for plaintiff offers in evidence Schedules C, D, and F.

Counsel for defendant renews his objections to Schedules C and D.

In October last past I was in London; at the London custom-house I saw the original of this request, dated Liverpool, 15th April, 1869, signed by C. K. Hayward, secretary; also the letter, 15th April, 1869, signed W. P. Gardner, and the submission, dated 17th April, 1869, signed by W. Wybrow, chief registrar of shipping, and the initials following, J. F. F.; this copy which I now produce I have compared with the original on file in the London customs, and I know it to be a true copy.

8 Q. Do you know the handwriting of C. K. Hayward, signed to the commission put in evidence by you, and dated Liverpool, 15th April, 1869?

A. I do.

9 Q. How do you know?

A. I have never seen him write, but I have seen hs signa-

42 ture, possibly, ten, fifteen, or may be twenty times, to depositions signed by him, each paper *seriatim* certified by the commissioner who took it; I have seen his signature to this document which I now produce, and it is marked "Plaintiff's Ex. No. 2, J. A. G., Ex'r," and to another document in the custom-house at Liverpool on the 8th of October, 1875, and signed by him.

10 Q. You say signed by him; do you mean to say that you surmise it was signed by him?

A. I do not mean to say that I surmised; I mean to say his signature I have seen to depositions certified by the commissioner, *seriatim* on pages, possibly fifteen times.

11 Q. Have you any knowledge of his signature other than that you have derived from seeing what you supposed to be his signature on these depositions to which you refer?

A. My testimony as to his signature is beyond supposition; as I have before testified, I have seen his handwriting at least ten times on depositions, and also upon official document or documents by him as secretary of the National Steam Navigation Company, and as secretary of this defendant.

12 Q. Where have you seen these signatures to official documents?

A. One document at Liverpool, in the custom-house, October 8, 1875; I also saw his signature to an official document as secretary of the said company in October last past, and to a receipt as secretary of this defendant, at the London custom-house, October last, a little over a month since.

13 Q. How did you know those signatures you saw at Liverpool and London were the signatures of C. K. Hayward?

A. The Liverpool signature by familiarity with signatures to a deposition about which I have before testified; at London, by familiarity with Mr. Hayward's signature to a deposition several times certified by the commissioner, a subsequent deposition several times
43 signed by him *seriatim*, and having seen the signature to the official document at Liverpool before.

14 Q. Your only knowledge of the signature of C. K. Hayward is from having seen what purported to be his signature on the depositions about which you have testified, and to the official documents about which you have testified?

A. I believe I am authorized to testify beyond purport of his signature, and that I derive my knowledge from seeing the signatures about which I testify.

15 Q. And you have no other knowledge than that of his signature?

A. I have no other knowledge than that of his signature.

16 Q. Do you know W. P. Gardner, who signed the paper, a copy of which was put in evidence, dated April 15, 1869?

A. I do not.

17 Q. Do you know his handwriting?

A. I do not.

18 Q. Do you know W. Wybrow?

A. I do not.

19 Q. Did you ever see him write?

A. I have not to my knowledge; I do not know his signature.

20 Q. Do you know the signatures of the liquidators, a copy of whose return, dated July 12, 1870, was offered in evidence by you as Schedule F.

A. Yes, sir.

21 Q. How do you know them?

A. I never have seen them write; I have seen their handwriting, as

near as my memory will serve me, ten to twenty times, to a deposition taken under commission, certified by the commissioner.

22 Q. That is your only knowledge you have of their signatures—seeing what you believed to be their signatures under those circumstances?

A. Yes, sir.

44 Defendant's counsel objects to the admission of these copies of papers in evidence, as incompetent, immaterial, and irrelevant, and as not sufficiently proved.

Adjourned to Friday, November 21, 1879, at three p. m.

NEW YORK, FRIDAY, *November* 21, 1879—3 p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Examination resumed:

23 Q. In testifying about these being copies of originals which you saw in the London custom-house, had you any personal knowledge that those papers which you saw there were originals?

A. I think I have from seeing them on file in the bureau or office where I did see them; this is my source of knowledge.

24 Q. And your knowledge of the originality of the papers which you saw in the other offices is the same as the papers you saw in the custom-house?

A. My other knowledge of the other papers I saw on file as to the Gardner Wybrow and order signed by J. F. F. is from only seeing them in the bureau or office where they were, and being shown by the officials; as to the other papers, the Hayward signatures in the London and Liverpool custom-houses, from seeing them there, being supplied by the officials, and the same knowledge I have before testified to as to their signatures; as to the winding-up papers signed by Rome and Dixon, as before testified to, my knowledge of original signature being furnished by officials and seeing them in the office where they were.

45 Counsel for the defendant again objects to the admission of these copies of papers in evidence, as immaterial, irrelevant, incompetent, and because not sufficiently proved to show that they were such originals or that these are copies of such originals.

Redirect:

Since the last adjournment I have counted what I testified to of having seen original signatures of William Rome to depositions and papers; the number is nineteen; and as to Hayward, the number is twenty.

Objected to, as incompetent, immaterial, and irrelevant.

Counsel for complainant offers in evidence an exemplificated copy of the judgment roll of Rebecca Gray against The National Steamship Navigation Company.

I know the plaintiff in this judgment roll to be the plaintiff here.

I now offer in evidence the Statutes of the State of New York, chapter 271 Laws of New York, 1833, section 9. (Section read in evidence.)

SECTION 9. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowle lgment of conveyances of real estate, and the certificate of the proper office endorsed thereon shall entitle such instrument to be received in evidence on the trial of any action with the same effect and in the same manner as if such instrument were a conveyance of real estate.

Chap. 271 Laws of N. Y., 1833.

An act to provide for taking the acknowledgments of
46 deeds and other written instruments by persons residing out of the State of New York. Passed April 7, 1848.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The proof or acknowledgement of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence when made by any person residing out of the State, and within any other State or Territory of the United States, may be made before any officer of such State or Territory authorized by the laws thereof to take the proof and acknowledgement of deeds; and when so taken and certified as herein provided, shall be entitled to be recorded in any county in this State, and may be read in evidence in any court in this State, in the same manner and with like effect as proofs and acknowledgements taken before any of the officers now authorized by law to take such proofs and acknowledgements. Provided that no such acknowledgement shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgement is the individual described in and who executed the said deed or instrument.

SEC. 2. To entitle any conveyance or written instrument acknowledged or proved under the preceding section to be read in evidence or recorded in this State, there shall be subjoined or attached to the certificate of proof or acknowledgement, signed by such officer, a certificate under the name and official seal of the clerk, register, recorder, or a prothonotary of the county in which such officer resides, or of the county or district court or court of common pleas thereof, specifying that such officer was at the time of taking such proof or acknowledgement duly authorized to take the same, and that such clerk, register, recorder, or prothonotary is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowlegement is genuine.

47 SEC. 426. Printed copies in volumes of statutes, code, or other written law, enacted by any other State or Territory, or foreign government purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory, or government, shall be admitted by the courts and officers of this State, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other State or Territory, or foreign government, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

New York Statutes-at-Large, Edmund's Edition, Vol. V., page 119. (Section read in evidence.)

I now offer in evidence, to be read therefrom, the Statutes of the United Kingdom of Great Britian and Ireland, 25 and 26 Victoria, 1862, by George Kittilby Rickards, Esq., of the Inner Temple, counsel to the Speaker of the House of Commons, and printed by George E. Eyre & William Spottiswoode, printers to the Queen's Most Excellent Majesty, 1862. (Sections read in evidence.)

Objected to as immaterial and irrelevant.

I now offer in evidence the Statutes of Great Britain and Ireland, 17 and 18 Victoria, 1854, printed by Her Majesty's printers, London, 1854. (Extract from the Merchants' Shipping Act read in evidence.)

Objected to as incompetent, irrelevant and immaterial.

Complainant closes.

48 United States Circuit Court, Southern District of New York.

REBECCA GRAY,
vs.
NATIONAL STEAMSHIP COMPANY.

NEW YORK, *December* 15, 1879.

Present: Counsel for both sides.

WILLIAM H. MAITLAND, a witness produced on the part of the plaintiff, being duly sworn, deposes and says:

My name is William H. Maitland, age sixty years; I am a resident of London and native of England; I was a solicitor in equity, and am now an engineer; I practised my profession as solicitor but a short time; I am acquainted with an official known as Printer to Her Majesty; his official office is situated close to Hind Court; he prints all the laws of the land; I have been to that place, and have purchased official documents; I look at the statutes, and I recognize them as printed by authority of the government by the public printer.

Witness is shown "The Statutes of the United Kingdom of Great

Britain and Ireland, 17 and 18 Victoria, 1854," London, printed by Her Majesty's Printers, 1854, and "The Statutes of the United Kingdom of Great Britain and Ireland, 25 and 26 Victoria, 1862, with tables showing the effect of the year's legislation, and a copious index; by George Kettilby Rickards, Esq., of the Inner Temple, counsel to the Speaker of the House of Commons, London; printed by George E. Eyre and William Spottiswoode, printers to the Queen's Most Excellent Majesty, 1862."

49 1 Q. Would this book be acted upon in the courts of Great Britain and Ireland?

Objected to, as leading, immaterial, incompetent, and irrelevant.

(Question withdrawn.)

2 Q. Upon what do the courts of Great Britain and Ireland act authoritatively in relation to the statutes and their promulgation as such?

Same objection, except as to leading.

A. They act upon the statutes and precedents.

3 Q. State what is the evidence of the statutes in courts.

A. From the statutes themselves, printed by the Queen's printers.

4 Q. As such, what recognition would these books receive in court?

A. They would be received in courts of Great Britain and Ireland; I know nothing about the consulates.

Books offered produced in evidence.

Cross-examination:

5 Q. Have you actually, yourself, ever bought these volumes?

A. I have not bought either of these, as I recollect, from the printer, but I have bought other volumes of similar statutes from him.

6 Q. Have you any knowledge that those are the statutes, except from reading the title page?

A. No; seeing the statutes themselves; I have purchased the Companies' Act of 1862, but it was not in this form; it was printed on larger paper.

50 7 Q. The only act that you recognize in either of these volumes is the one that you say you purchased yourself?

A. It is called the Companies' Act of 1862, on page 484, volume 102, 25 and 26 Victoria; that is the only one that I see that I actually purchased; that was printed in a different shape.

8 Q. Have you, yourself, ever had occasion to put in evidence either of these volumes in any of the courts of Great Britain and Ireland?

A. No; not myself; I have practiced as a solicitor about one year or two in London; since that time my profession has been that of a civil engineer and mechanical engineer.

Re-direct examination:

9 Q. Have you in any court ever seen statutes printed by authority,

such as you have referred to, offered in evidence and received and recognized as such?

Objected to, as leading, incompetent, and irrelevant.

A. Many and many times; how many it is impossible to say.

W. H. MAITLAND.

51 The people of the State of New York, by the grace of God free and independent. To all whom these presents shall come, Greeting:

Know ye that we, having inspected the files of the superior court of the city of New York, do find there remaining on file a certain judgment roll in an action wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steam Navigation Company are defendants, in the words and figures following, to wit:

[L. S.]

Superior Court of the City of New York.

REBECCA GRAY, as Administratrix of WILSON W. GRAY, Deceased, Plaintiff, *vs.* THE NATIONAL STEAM NAVIGATION COMPANY, Defendant.	Summons for Relief.

To the defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 33 Wall street, in the city of New York, within twenty days after the service hereof, exclusive of the day of
52 such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated October 31, 1867.

GOEPP & STERN,
Plaintiff's Attorneys.

Superior Court of the City of New York.

REBECCA GRAY, as Administratrix of WILSON W. GRAY, Deceased,
against
THE NATIONAL STEAM NAVIGATION COMPANY.

The complaint of the plaintiff shows to the court:

1. That the defendants are a corporation created by and under the laws of the United Kingdom of Great Britain and Ireland, and at the times hereinafter mentioned, being such corporation, owned and sailed a line of ocean steamers between New York and Queenstown and Liverpool.

2. That on the twenty-fourth day of October, 1867, Wilson W. Gray, the plaintiff's intestate, was lawfully on board of a certain

canal boat called and known as No. 605 of the canal boat line of the Lehigh Coal and Navigation Company, whereof the said Wilson W. Gray was master, which said canal boat, along with thirteen
53 others, was then being towed by the tugboat Princeton from New Brunswick, in the State of New Jersey, to the city of New York.

3. That on the day last aforesaid, when the said tug-boat, with the said fourteen canal boats in tow, had proceeded on its said voyage up the Hudson river, or North river, to a point nearly opposite pier No. 2, and within the city and county of New York and State of New York, and was proceeding lawfully on her said voyage, as she had a perfect right to do, the steamship Pennsylvania, belonging to the defendants and forming one of their said line of steamers, came down the said Hudson or North river in a diagonal direction, from the western or New Jersey side of said river towards the eastern or New York side, sailing in a southeasterly direction, with a great head of steam on, and then and there, with great force and violence, ran into said canal boat No. 605 and sunk the same; and the said Wilson W. Gray was, by reason and in consequence of said collision, struck by the lashing of the said canal boat 605, and was, by reason and in consequence of said collision, then and there drowned.

4. That the persons navigating the said steamer Pennsylvania did not keep a sufficient look-out, and did not properly navigate and steer the said steamer, and did not back the said steamer in time to avoid the said collision; and that the collision aforesaid, and the consequent death of said Wilson W. Gray, were occasioned by the negligence, inattention, and want of proper care and skill on the part of the defendants' said steamer, her master and crew, and not from any fault, omission, or neglect on the part of the said tugboat and canal boats, their masters and crews.

5. That the said Wilson W. Gray left a widow, Rebecca Gray, the plaintiff, who was dependent on him for subsistence, and a father, and that the pecuniary injuries which have resulted from the said death of said Wilson W. Gray to his said wife and next of kin exceed the sum of five thousand dollars.

54 6. That said Wilson W. Gray, so killed, died intestate, and that on the twenty-ninth day of October, 1867, letters of administration on his estate, dated on that day, were duly issued and granted to the plaintiff by the surrogate of the county of New York, whereby she was duly appointed administratrix as aforesaid, and that thereupon she duly qualified and entered on the duties of her said office.

Wherefore the plaintiff demands judgment against the defendants for her damages, to wit, five thousand dollars, together with the costs of this action.

GOEPP & STERN,
Plaintiff's Attorneys.

CITY AND COUNTY OF NEW YORK, *ss:*

Simon Stern, being duly sworn, says that he is one of the attorneys of the plaintiff; that the foregoing complaint is true to his own

knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the reason the verification is not made by the plaintiff is that she is not within the county of New York, which is the county wherein deponent resides; that deponent's sources of knowledge are the statements of the plaintiff, who was an eye-witness of the transaction, and other witnesses present, which statements deponent believes to be true; also inspection of plaintiff's letters of administration.

SIMON STERN.

Sworn to before me, this October 30th, 1867.

HENRY A. BIGLOW,
Commissioner of Deeds, New York City.

55 Superior Court of the City of New York.

REBECCA GRAY, Administratrix, &c., Plaintiff,
against
THE NATIONAL STEAM NAVIGATION COMPANY, Defendants.

These defendants, for answer to the plaintiff's complaint, admit that they were created a corporation by and under the laws of Great Britain and Ireland.

And these defendants admit that a collision took place at or about the time stated in the complaint between the steamship Pennsylvania and certain canal boats; and as to all other matters stated in the complaint, these defendants deny the same, severally and specifically, and pray that the plaintiff's complaint be dismissed, with costs.

JOHN CHETWOOD,
Defendants' Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

FRANCIS W. J. HURST, being duly sworn, says that he is the only managing agent in the United States of the defendants; that he has read the foregoing answer, and same is true of his own
56 knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this December 16th, 1867.

ADAM GOS,
Notary Public, New York County.

At a trial term of the superior court of the city of New York, held at the city hall in the city of New York, on the twelfth day of May, A. D. 1868.

Present: Mr. Justice Barbour.

Verdict.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAM NAVIGATION COMPANY.

The court charge the jury, who say that they find a verdict for the plaintiff, and assess the damages at the sum of $3,000.

An extra allowance of 2 1-2 per cent. to plaintiff.

Thirty days' time allowed defendant to make a case.

$1 pd.

(Extract from the minutes.)

JAMES M. SWEENY, *Clerk.*

57 Superior Court of the City of New York.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAM NAVIGATION COMPANY.

The issues of fact in this action having been brought on for trial before Mr. Justice Barbour and a jury, at a trial term of this court, held on the first Monday of May, 1868, and a verdict having been duly rendered for the plaintiff on the 12th day of May, 1868, whereby they find for the plaintiff three thousand dollars.

Now, upon motion of Goepp & Stern, plaintiff's attorneys, it is hereby adjudged that Rebecca Gray, administratrix of Wilson W. Gray, deceased, the plaintiff, recover of the National Steam Navigation Company, the defendants, the sum of three thousand dollars, found by the jury, together with $289.05–100 dollars costs and disbursements, amounting in all to three thousand two hundred and eighty-nine dollars and five cents.

JAMES W. SWEENY, *Clerk.*

Dated June 23d, 1868.

Filed June 23d, 1868, at 3.20 p. m.

All of which we have caused by these presents to be exemplified, and the seal of the superior court of the city of New Nork to be hereunto affixed.

Witness, Gilbert M. Speir, Esquire, presiding justice of our said court, at the city hall of the city of New York, this seventeenth day of June, A. D. 1875.

THOS. BOESE, *Clerk.*

58 Superior Court of the City of New York.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAM NAVIGATION COMPANY.

I, Gilbert M. Speir, presiding justice of the superior court of the city of New York, do hereby certify that Thomas Boese, whose

name is subscribed to the preceding exemplification, is the clerk of the said superior court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said superior court of the city of New York, and that the attestation thereof is in due form of law.

G. M. SPEIR,
Presiding Justice of the Superior Court of the City of New York.

Dated New York, June 17, 1875.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

I, Thomas, Boese, clerk of the superior court of the city of New York, do hereby certify that Gilbert M. Spier, whose name is subscribed to the preceding certificate, is the presiding justice of the superior court of the city of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court, this seventeenth day of June, 1875.

[L. S.] THOS. BOESE, *Clerk.*

59 *Extracts from Statutes at Large of United Kingdom of Great Britain and Ireland, Vol.* 102, 25 *and* 26 *Victoria.*

Preliminary. Short Title.

SECTION 1. This act may be cited for all purposes as The Companies' Act, 1862, page 434.

Power of companies to change name.

SEC. 13. Any company, under this act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Board of Trade, testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name; and upon such change being made, the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation, altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name (page 437).

Voluntary winding-up of company.

Circumstances under which company may be wound up voluntarily.

SEC. 129. A company under this act may be wound up volun-

tarily whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

Whenever the company has passed a special resolution requiring the company to be wound up voluntarily;

Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that
60 the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same;

For the purposes of this act, any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it has been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

SEC. 130. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

SEC. 131. Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Notice of resolution to wind up voluntarily.

SEC. 132. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement, as respects companies registered in England, in the London Gazette; as respects companies registered in Scotland, in the Edinburgh Gazette, and as respects companies registered in Ireland, in the Dublin Gazette.

Consequences of voluntary windings-up.

SEC. 133. The following consequences shall ensue upon the voluntary winding-up of a company:

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company.

61 (2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property.

(3.) The company in general meeting shall appoint such persons or

person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him.

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him.

(5.) Upon the appointment of liquidators, all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers.

(6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two.

(7.) The liquidators may, without the sanction of the court, exercise all powers by this act given to the official liquidator.

(8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

(9.) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories, upon whom the same is made, may partly or wholly fail to pay their respective portions of the same.

62

(10.) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves (pages 467 and 468).

Liquidators, on conclusion of winding up, to make an account.

SEC. 142. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting as respects companies registered in England in the London Gazette, and as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette (page 469).

Liquidators to report meeting to registrar.

SEC. 143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same

was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidators make default in making such return to the registrar, they shall incur a penalty not exceeding five pounds for every day during which such default continues, (pages 469 and 470.)

Debts of all description to be proved.

SEC. 158. In the event of any company being wound up under this act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (page 472).

63 Preliminary.

SECTION 1. This act may be cited for all purposes as "The merchant shipping act, 1854."

"Person" shall include body corporate.

Part II.

British ships; their ownership, measurement, and registry.

SEC. 19. Every British ship must be registered in manner hereinafter mentioned.

Registry of British ships.

SEC. 30. The following persons are required to register British ships, and shall be deemed registrars for the purposes of this act, that is to say:

1. At any port or other place in the United Kingdom or Isle of Man approved by the commissioners of customs for the registry of ships, the collector, comptroller, or other principal officer of customs for the time being.

SEC. 32. Every registrar shall keep a book, to be called "The Register Book," and enter therein the particulars hereinafter required to be registered.

SEC. 35. Every application for the registry of a ship shall, in the case of individuals, be made by the person requiring to be registered as owner, or by some one or more of such persons, if more than one, or by his or their duly authorized agent, and in the case of bodies corporate, by their duly authorized agent, the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointers; and if appointed by a body corporate, by some instrument under the common seal of such body corporate.

SEC. 42. As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the

Register Book the following particulars relating to such ship, that is to say:

64 1. The name of the ship and of the port to which she belongs.

2. The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.

3. The several particulars as to her origin stated in the declaration or declarations of ownership.

4. The names and descriptions of her registered owner or owners; and if there is more than one such owner, the proportions in which they are interested in such ship.

Certificate of registry.

SEC. 44. Upon the completion of the registry of any ship, the registrar shall grant a certificate of registry in the form marked D in the schedule hereto, comprising the following particulars, that is to say:

1. The name of the ship and of the port to which she belongs.

2. The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.

3. The name of her master.

4. The several particulars as to her origin stated in the declaration or declarations of ownership.

5. The names and descriptions of her registered owner or owners; and if there is more than one such owner, the proportions in which they are, respectively, interested indorsed upon such certificate.

SEC. 52. If the master or owner of any ship uses, or attempts to use, for the navigation of such ship, a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanor; and it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to

65 seize and detain such ship, and to bring her for adjudication before the high court of admiralty in England or Ireland, or any court having admiralty jurisdiction in Her Majesty's dominions; and if such court is of opinion that such use, or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel, and furniture, to be forfeited to Her Majesty, and may award such portion of the proceeds arising from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

Transfers and transmissions.

SEC. 55. A registered ship, or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale; and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such other description as may be sufficient to identify the ship to the satisfaction of the registrar, and shall be according to the form marked E in the schedule hereto, or as near thereto as circumstances

permit, and shall be executed by the transferrer in the presence of and be attested by one or more witnesses.

SEC. 57. Every bill of sale for the transfer of any ship, or of any share therein, when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration hereinbefore required to be made by the transferee; and the registrar shall thereupon enter in the Register Book the name of the transferee as owner of the ship or share comprised in such bill of sale, and shall indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale of any ship, or shares in any ship, shall be entered in the Register Book in the order of their production to the registrar.

66 FORM E. (*Section* 55.)

BILL OF SALE.

No.	Date of Registry.		
Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By steam or sails, and if by steam whether by paddle or screw.

Number of decks		Build	Carved or clincher.
Number of masts		Gallery	Description of.
Rigging	Nature of, and whether standing or running bowsprit.	Head	Kind of.
Stern	Round, square, or other description.	Framework	Wood or other materials.

MEASUREMENTS.	FEET.	TENTHS.
Length from the forepart of stem under the bowsprit to the aftside of the head of the sternpost		
Main breadth to outside of plank		
Depth in hold from tonnage deck to ceiling at midships		

Bill of Sale—Continued.

TONNAGE.	NO. OF TONS.
Tonnage under tonnage deck	
Closed in spaces above the tonnage deck, if any, viz	
Space or spaces between decks	
Poop	
Roundhouse	
Other inclosed spaces, if any, naming them	
Total	

Omit this part, if she has no steam power.

ADDITIONAL PARTICULARS FOR STEAMERS.	TONS.	
Deducting for space required for propelling power, say whether 37-100ths or 32-100ths, or as measured		
	FEET.	TENTHS.
Length of engine room (if measured)		
	NUMBER OF ENGINES.	
Engines		
	NO. OF HORSE-POWER.	
Combined power (estimated horse-power)		

Register tonnage (after making deduction for propelling power in steamers) _____

Alter as necessary, if there be more than one owner.

I, A. B., of ———, in the county of ———, being owners of —— shares in the ship above particularly described, in consideration of £—— paid to me by C. D., of ———, in the county of ———, hereby transfer to the said C. D. the said shares.

Further, I, A. B., for myself and my heirs, covenant with the said C. D. and his assigns that I have power to transfer in manner aforesaid the said shares, and that the same are free *from incumbrances*,* save as appears by the registry of said ship.

In witness whereof, I have hereunto subscribed my name and affixed my seal, this — day of ———, eighteen hundred and seventy-nine.

[L. S.] (Signed) ——— ———.

Executed by the above in the presence of—

(Insert description and place of residence.)

* Omit if no incumbrances the words in italics.

67 PLAINTIFF'S EXHIBIT No. 1.—J. A. S., *Ex'r.* NOV. 17, 1879.

Whereas I have become vested in and entitled to a certain judgment rendered in my favor in a certain action heretofore pending in the supreme court of the city of New York, in which I, Rebecca Gray, as administratrix of the goods, chattels and effects which were of Wilson W. Gray, deceased, was plaintiff, and the National Steam Navigation Company was defendant, and the said judgment is for the sum of three thousand two hundred and eighty-nine 5-100 dollars, and which said judgment was assigned by me to Asa F. Miller, and by said Miller assigned to Henry Morrison, and by him assigned to me, and the said judgment is uncollectable as against the defendant therein:

Now, in consideration of full value received and the premises, I hereby retain and employ Lauterbach & Spingarn, of the city of New York, attorneys-at-law, to take all lawful ways and means to collect said judgment from the National Steamship Company, and out of the proceeds, if successful, to pay Henry Morrison for all the outlays he has heretofore made in the suit against the said company last mentioned, in which Asa F. Miller was plaintiff, in the supreme court, the amount paid by said Henry Morrison to Messrs. Goepp & Sterne, my attorneys, of the city of New York, on the occasion of the assignment by me to said Miller; the traveling expenses of said Morrison to England and his return, in his efforts to collect said judgment in England; all his outlays there in the matter thereof, together with all costs, charges, which the said Morrison may claim for himself and allow the said Lauterbach & Spingarn in the further prosecution of the claim; and, in the event of success, the amount to be paid to me to be in the sole discretion of the said Henry Morrison, this special agreement being for the reason that I am to be saved harmless from the expense in the collection. I am afraid the claim is doubtful, and he, said Morrison, expresses himself in the belief of success, he and I both desirous he shall not be the loser
68 of his assistance heretofore to me, and his trouble and pains in his efforts heretofore to collect the judgment, so much thereof as is necessary for the purposes of this agreement I appropriate and direct Messrs. Lauterbach & Spingarn to devote for the purpose.

In witness whereof I have hereunto set my hand and seal, this nineteenth day of February, 1877.

REBECCA GRAY. [L. S.]

In presence of—
JOHN SIPHERD.

69 EXHIBIT No. 2.—J. A. S., *Ex.*

[SEAL.] NATIONAL STEAMSHIP COMPANY, LIMITED,
DEWEY BUILDING, 21 WATER LANE,
LIVERPOOL, 15 *April*, 1869.

To the Register of Shipping, Custom-House, Liverpool.

SIR: I beg to request that the eight undermentioned steamers, at present registered in the name of the National Steam Navigation

Company, Limited, be transferred to the National Steamship Company, Limited, the first-named company having been reconstructed under the latter name, and being in process of liquidation.

I am, sir, your obedient servant,

[SEAL.] C. K. HAYWARD, *Secretary.*

S. S. The Queen.
" " " England.
" " " Denmark.
" " " Helvetia.
" " " Erin.
" " " Pennsylvania.
" " " Virginia.
" " " Louisiana.

70 With certificates of incorporation of steamship company, limited, and of change of name to National Steamship Company, Limited.

SECRETARY'S BRANCH, No. 642,
CUSTOM-HOUSE, LIVERPOOL, 15 *April*, 1869.

HONORABLE SIRS: I submit the aforegoing application requesting that these vessels now standing in the name of the "National Steam Navigation Company," Limited, may be registered under the title of the "National Steamship Company," Limited, as sanctioned by the annexed certificate of incorporation.

(Secretary, Apl. 6, 1869.)
W. P. GARDNER. 52–4.

The hon'ble comm'r.

To the chief register. By order:

[SEAL.] GEO. DICKINS.

C. R. 166, 1879.

71 The evidence of change of name of the company being satisfactory, as shown by the enclosed certificate of incorporation, I submit that the several registers of the vessels may be noted as requested.

17 April, 1869. W. WYBROW,
Chief Reg'r of Shipping.

W. B. E., As. Registrar.
17th–19 April, 1869. Ordered. T. F. F.

28th April, 1869. Received certificate of incorporation.
C. K. HAYWARD,
Sec'y Nat'l Steamship Co., Limited.

I hereby certify the aforegoing to be a true copy of a paper belonging to the commissioners of Her Britannic Majesty's customs, issued under their order dated 12th day of August, 1879.

W. W. HOOPER,
Registrar of Shipping, Port of London.

72 Endorsed: Original filed May 5, 1881. Joseph M. Deuel, clerk.

73 The President of the United States of America to S. V. Packard, Esq., Consul, or the Vice-Consul at Liverpool, England, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority diligently to examine upon his corporal oath or affirmation before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, W. P. Gardner, registrar of shipping, or such other person who may be such registrar or assistant registrar of shipping in Liverpool, England, as a witness on the part of the plaintiff in a certain cause now pending undetermined in the circuit court of the United States of America for the southern district of New York, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company are defendants.

74 And we do further empower you to examine, on the same behalf and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby
75 require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up, under your hand and seal, directed to Lauterbach & Spingarn, Esqs., 206 Broadway, in the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause indorsed on the envelope of the commission.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, this twelfth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States for the Southern District of New York.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, the cross-interrogatories, depositions, and exhibits must be folded into a packet and bound with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:

To Lauterbach & Spingarn, Esqs., 206 Broadway, in the City of New York.

Interrogatories Administered to the Witness under and pursuant to the annexed Commission.

First interrogatory. What is your name, age, residence, and occupation or official position?

Second interrogatory. In your official position have you
76 charge of, access to, and control over the archives, records, or register of merchant shipping at Liverpool, England?

Third interrogatory. If you shall have answered the last preceding interrogatory in the affirmative, please to annex a copy of that part of your record showing in whom, whether idividual or individual corporation or corporations, was the ownership of the following-named steamships: "The Queen," "Denmark," "England," "Helvetia," "Erin," "Pennsylvania," "Virginia," and "Louisiana," and show from what time to what time the said ownership so continued of record.

Fourth interrogatory. If you shall have answered the preceding interrogatories in the affirmative as to the ownership being shown by the record, state at the periods of the termination of said record ownership who, according to the records, became owners; annex copy of the record showing that.

Fifth interrogatory. If any change of ownership of the said steamships took place according to the records, state if the same was by bill or bills of sale. If yea, state if the said bill or bills of sale, or a copy or copies thereof, are of record, registry, or on file in the bureau, department, or office of which you are the official in charge; and if said original or copies are on file, annex copies of the same to your deposition under this commission.

Sixth interrogatory. If the said steamships herein interrogated about have been transferred, and the ownership changed otherwise than by bill or bills of sale, annex copies of any writings of record in your office, or any original writing in your possession or
77 control showing in what manner, at what time and place, the said change of ownership was effected.

Seventh interrogatory:

In the event of your having answered that the change of ownership of the said steamships was otherwise than by bill or bills of sale or writing of record or otherwise, if within your own knowledge, state the facts and circumstances concerning or relating to the change of ownership and the absence of said bill or bills of sale.

Eighth interrogatory:

Please annex copies of the registry of said steamships to this, your deposition.

Last interrogatory:

Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yes, set forth the same fully and at large in your answer.

LAUTERBACH & SPINGARN,
Solicitors for Plaintiff, 206 *Broadway, New York City.*

78 United States Circuit Court, Southern District of New York.

REBECCA GRAY, administratrix, Plaintiff,
against
THE NATIONAL STEAM SHIP COMPANY, Defendant.

Interrogatories to be administered to W. P. Gardner, register of

shipping, or such other person as may be such registrar, witnesses to be examined under the annexed commission, on behalf of the defendants in this cause:

First. Did you yourself make any entry in or write any part of the records of your office purporting to show in whom was the ownership of the steamships the Queen, Denmark, England, Helvetia, Erin, Pennsylvania, Virginia and Louisiana?

Second. If you answer yea to the former question, state whether you have any knowledge of your own of the facts so written or entered by you.

Third. If to the fourth interrrogatory in chief you testify to any apparent ownership of said vessels, state whether you yourself made the entry or entries purporting to show such change, and, if you made them, whether you made them upon facts within your own knowledge.

Fourth. If in answer to the fifth interrogatory in chief you state that the alleged change in ownership, as shown by the records, was by bill of sale, state whether you, of your own knowledge, know
79 that there was such an original genuine bill of sale, duly executed and delivered to and by the proper parties, and whether it is in your office?

Fifth. If in answer to the sixth interrogatory in chief you testify to any change of ownership of said steamships by writing or writings other than by bill of sale, state whether you have any personal knowledge of the genuine character of such apparent original writing or writings, and whether it or they are in your office.

JOHN CHETWOOD,
Attorney for Defendant.

United States Circuit Court, Southern District of New York.

REBECCA GRAY, Administratrix,
against
THE NATIONAL STEAMSHIP COMPANY. } In Equity.

The annexed interrogatories are hereby settled by consent, subject to all legal objections and exception.

January 27, 1879.

LAUTERBACH & SPINGARN,
Solicitor for Plaintiff.
JOHN CHETWOOD,
Solicitor for Defendant.

The execution of this commission appears in certain schedules hereunto annexed.

WILLIAM P. PAULL,
United States Vice Consul, at Liverpool, England, Commissioner.

FORM No. 19. 80 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
45,170	"Virginia."	289	1863.	Liverpool.

No., Date, and Port of previous Registry (if any ..... Register transferred from Newcastle.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1863.	

		Feet.	Tenths.
Number of Decks ..... Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	341	8
Number of Masts ..... Three.	Main breadth to outside of plank	41	2
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	4
Stern ..... Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	
Build ..... Clench.	Length of engine-room, if any	40	2
Galleries ..... None.			
Head ..... Three-quarter female figure.			
Framework ..... Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

FORM No. 19. (*Continued.*)

81 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,914.20	On account of space required for propelling power	470.03
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks. Spar deck	773.99	These spaces are the following, viz	
Space or spaces between decks. Poop	199.44		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows			
		Cubic Metres.	
Gross Tonnage	2,887.63		
Deduction as per contra	470.03		
Registered Tonnage	2,417.60	Total deduction	470.03

Name of Master ____ Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty fourth Shares held by each } Viz.: { WILLIAM JAMES FERNIE, of Liverpool, in the County of Lancaster, Merchant. { Sixty-four. (64)

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of the "Virginia" as appears by the Books of Registry of British ships of this port.

Register dated 24th July, 1863.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) (5 rms 1 | 74—H & S 2476)

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the three following sheets of paper, and marked G 1, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

GEO. THOMAS.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

Official Number of Ship 45.170. | Port of Liverpool. Name of Ship Virginia. | Number and Date of Registry 289 | 1863.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.
1		William James Fernie.	64	23d Nov., 1863, 2 P. M.	Bill of Sale, dated 21st Nov., 1863.	The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster.

FORM No. 20. (*Continued.*)

84 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
	1	THE NATIONAL STEAM NAVIGATION COMPANY, LIMITED. Total, 23d November, 1863.			64	
		Registered anew 28th January, 1864, Certificate of Registry delivered up and cancelled 28th January, 1864. Registry closed.				

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

7—216

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
45,170	"Virginia."	35	1864.	Liverpool.

No., Date, and Port of previous Registry (if any). 289 | 1863 | Liverpool, Registered anew on change of Ownership.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam, screw.	Jarrow, in the County of Durham.	1863.	

		Feet.	Tenths.
Number of Decks—Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	341	8
Number of Masts—Three.	Main breadth to outside of plank	41	2
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at midships	20	4
Stern—Elliptical.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	28	
Build—Clench.	Length of engine-room, if any	40	2
Galleries—None.			
Head—Three-quarter female figure.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,914.20	On account of space required for propelling power	470.03
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or stores of every kind not being the personal property of the Crew	
Space or spaces between decks	773.99	These spaces are the following, viz.	
Poop	199.44		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows			
		Cubic Metres.	
Gross Tonnage	2,877.63		
Deductions as per contra	470.03		
Registered Tonnage	2,417.60	Total deductions	470.03

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Sold to Foreigners as of bill of sale and letter from Owners, dated 13th December, 1871. Certificate of Registry delivered up and cancelled and Register closed 19th December, 1871.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of the "Virginia" as appears by the Books of Registry of British ships at this port.

Registry dated 28th January, 1864. Assistant Registrar, GEO. THOMAS.

Tonnage altered to 2,387 27-100 tons by reduction of engine space, 22-11-66.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 20.

Transactions Subsequent to Register.

Official Number of Ship 45,170	Port of Liverpool. Name of Ship Virginia.	Number and Date of Registry 35 | 1864.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages. and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.
					Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, "The National Steam Navigation Company, Limited."	

FORM No. 20. (*Continued.*)

88 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED, Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4·103] 330

FORM No. 19.

89 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
29,920	"The Queen."	238	1865.	Liverpool.

No., Date, and Port of previous Registry (if any) | New Ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steamer, screw.	Birkenhead, in the County of Chester.	1865.	Unknown.

		Feet.	Tenths.
Number of Decks ..... Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	381	1
Number of Masts ..... Three.	Main breadth to outside of plank	42	4
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	21	2
Stern ..... Elliptic.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	29	2
Build ..... Clench.	Length of engine-room, if any	55	
Galleries ..... No.			
Head ..... Demi-Woman.			
Framework ..... Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							400

FORM No. 19. *(Continued.)* 90 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,406.38	On account of space required for propelling power 1 3-4	706.24
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks—Lower spar deck	999.60		
Saloon	103.36		
Forecastle	8.07		
Round-House			
Other closed in spaces, if any, as follows:		These spaces are the following, viz	
Top Gallant, Forecastle and Side Deck Houses, wg. 165 12-100 tons, for use of crew, not charged		Cubic Metres.	
Gross Tonnage 1 3-4	3,517.41		
Deduction as per contra	706.24		
Registered Tonnage	2,811.17	Total deduction	706.24

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty fourth Shares held by each } Viz.: { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the county of Lancaster. } Sixty-four. (64)

Registered anew, No. 97, 1872, on alteration of tonnage. Certificate of Registry delivered up and cancelled. Register closed 12th July, 1872.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of "The Queen" as appears by the Books of Registry of British ships of this port.

Register dated 16th August, 1865. Assistant Registrar, GEO. THOMAS.

Tonnage altered to 2,766.56 tons, 25-9-66. Tonnage altered to 2,391.84 tons, 8-4-67. Tonnage altered to 3,508.86-100 tons per B. O., 13-12-70, and G. O., 133, 1870.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) (5 rms 1 | 74—H & S 2476)

G 2.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the three following sheets of paper, and marked G 2, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

GEO. THOMAS.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

FORM No. 20.

Transactions Subsequent to Register.

Official Number of Ship 29.920. | Port of Liverpool. | Name of Ship The Queen. | Number and Date of Registry 238 | 1865.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.
						Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, from "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

Transactions Subsequent to Register.

Col. 8.	SUMMARY					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

8—216

FORM No. 19. 94 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
29,920	"The Queen."	97	1872.	Liverpool.

No., Date, and Port of previous Registry (if any) | Liverpool | 238 | 1865 | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Birkenhead, in the County of Chester.	1865.	Laird Bros., Birkenhead.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	381	1
Number of Masts—Three.	Main breadth to outside of plank	42	4
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	21	2
Stern—Round.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	37	3
Build—Clench.	Length of engine-room, if any	55	
Galleries—None.			
Head—Demi-Woman.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Horizontal Direct Acting.	British.	1865.	Laird Bros., Birkenhead.	65 inches.	3 ft. 6 in.	400

FORM No. 19. (*Continued.*) *Signal letters (if any).* Transcript of Register. 95

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,406.38	On account of space required for propelling power	932.44
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	185.01
Space or spaces between decks (2nd and 3rd)	999.60		
Ditto (3rd and 4th)	1,030.58		
Forecastle			
Round-House	4.74	These spaces are the following, viz.:	
Other closed in spaces, if any, as follows:			
		Cubic Metres.	
Gross Tonnage 1 3-4	4,441.30	12,568.87	
Deductions as per contra	1,117.45	3,162.38	
Registered Tonnage	3,323.85	9,406.49	Total deductions 1,117.45

Name of Master ..... Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster. } Sixty-four. (64)

Certificate of Registry cancelled and Register closed 13th March, 1874. Vessel Registered anew, No. 39, 1874, on alteration of tonnage.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing to be a true copy of the Registry of "The Queen" as appears by the Books of Registry of British ships at this port.

Register dated 12th July, 1872. Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) (5 rms 1 | 74—H & S 2476)

FORM No. 19.

96 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
29,920	"The Queen."	39	1874.	Liverpool.

No., Date, and Port of previous Registry (if any) | Liverpool | 97 | 1872 | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam, screw.	Birkenhead, in the County of Chester.	1865.	Laird Bros., Birkenhead.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	381	1
Number of Masts—Three.	Main breadth to outside of plank	42	4
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at midships	21	2
Stern—Round.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	37	3
Build—Clench.	Length of engine-room, if any	66	6
Galleries—None.			
Head—Demi-Woman.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Compound, Vertical Direct Acting.	British.	1874.	G. Forrester & Co., Liverpool.	55 & 90 inches.	4 feet.	420

FORM No. 19. (*Continued.*)

97 *Signal Letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,406.38	On account of space required for propelling power	1,426.30
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices	
Space or spaces between decks (2nd and 3rd)	999.60	and appropriated to their use and kept free from Goods	
Ditto (3rd and 4th)	1,030.58	or Store sof every kind not being the personal property	
Forecastle		of the Crew	219.15
Round-Houses	20.62	These spaces are the following, viz	
Other closed in spaces, if any, as follows:			
	Cubic Metres.		
Gross Tonnage 1 3-4	4,457.18	12,613.82	
Deductions as per contra	1,645.45	4,656.62	
Registered Tonnage	2,811.73	7,957.20 Total deductions	1,645.45

9—216

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four 64

The National Steam Ship Company, Limited, of 21 Water street, Liverpool, County of Lancaster, appointed Managing Owner by the National Steam Ship Company, Limited, 10th October, 1875.

William Boyd Macalister, of Drury Buildings, Water street, Liverpool, County of Lancaster, appointed the person to whom the management of the ship is intrusted by and on behalf of the Owner, by letter dated 5th February, 1876, under the seal of the National Steam Ship Company, Limited, registered Owner of Sixty-four Shares.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing to be a true copy of the Registry of "The Queen" as appears by the Books of Registry of British ships at this port.

Registry dated 13th March, 1874. Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19. 98 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
29,960	"England."	14	1866.	Liverpool.

No., Date, and Port of previous Registry (if any)—New Ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam, screw.	Jarrow, in the County of Durham.	1865.	Unknown.

		Feet.	Tenths.
Number of Decks—Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	357	5
Number of Masts—Three.	Main breadth to outside of plank	42	
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	19	9·5
Stern—Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	27	8
Build—Clincher.	Length of engine-room, if any	59	7
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							

FORM No. 19. (*Continued.*) 99 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,169.71	On acc't of space required for propelling power, 32-100	711.50
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks	907.95		
Poop	229.98		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows:		These spaces are the following, viz.:	
		Cubic Metres.	
Gross Tonnage 32-100	3,307.64		
Deductions as per contra	711.50		
Registered Tonnage	2,596.14	Total deductions	711.50

Name of Master — Certificate of { Service No. / Competency No. }

Names, Residence and Description of the Owners, and Number of Sixty fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster. } Sixty-four. 64

22d October, 1866—Tonnage altered, 2,249.20-100 tons.
Certificate of Registry cancelled and Register closed 24th August, 1874. Vessel Registered anew on alteration of tonnage, No. 132, 1874.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of "England," as appears by the Books of Registry of British ships at this port.
Register dated 28th January, 1866.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) (5 rms 1 | 74—H & S 2476)

100 G 3.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix ,&c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the two following sheets of paper, and marked G 3, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL.

GEO. THOMAS. *United States Vice and Deputy Consul at Liverpool, England, Commissioner.*

FORM No. 20.

TRANSACTIONS SUBSEQUENT TO REGISTER.

Official Number of Ship 29,996.	Port of Liverpool. Name of Ship England.	Number and Date of Registry 14 | 1866.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, from "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

102 Transactions Subsequent to Register.

Col. 8.	SUMMARY					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED.			64	
		Total, 19th April, 1869.				

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4·103] 330

10—216

FORM No. 19. 103 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
29,996	"England."	132	1874.	Liverpool.

No., Date, and Port of previous Registry (if any) | 14 | 1866 | Liverpool | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam, screw.	Jarrow, in the County of Durham.	1865.	Palmer, Bros. & Co., Jarrow.

		Feet.	Tenths.
Number of Decks ..... Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	437	9
Number of Masts ..... Three.	Main breadth to outside of plank	42	5
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at midships	20	2
Stern ..... Elliptic.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	35	
Build ..... Clench.	Length of engine-room, if any	68	1
Galleries ..... None.			
Head ..... Demi-Woman.			
Framework ..... Iron.			

PAKTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Compound, Vertical Direct Acting.	British.	1874.	G. Forrester & Co., Liverpool.	55 & 90 inches.	4 feet.	420

FORM No. 19. (*Continued.*)

104 *Signal Letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,711.13	On account of space required for propelling power	1,567.28
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	218.78
Space or spaces between decks (2nd and 3rd)	1,086.80		
Ditto (3rd and 4th)	1,058.61		
Forecastle			
Round-House	41.20	These spaces are the following, viz.	
Other closed in spaces, if any, as follows:			
		Cubic Metres.	
Gross Tonnage	4,897.74	13,860.60	
Deductions as per contra	1,786.06	5,054.55	
Registered Tonnage	3,111.68	8,806.05 Total deductions	1,786.06

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, of Liverpool, County Lancaster } Sixty-four. 64

William Boyd Macalister, of 21 Water street, Liverpool, is appointed the person to whom the management of the ship is intrusted by and on behalf of the owners per letter dated 5th February, 1876.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing to be a true copy of the Registry of the "England" as appears by the Books of Registry of British ships at this port.

Registry dated 24th August, 1874. Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19.
105 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
54,945	"Denmark."	81	1866.	Liverpool.

No., Date, and Port of previous Registry (if any)—New Ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Stockton-on-Trees. in the County of Durham.	1866.	

		Feet.	Tenths.
Number of Decks—Three and Poop.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	342	9
Number of Masts—Three.	Main breadth to outside of plank	42	25
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	35
Stern—Elliptic.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	5
Build—Clincher.	Length of engine-room, if any	56	7
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

11—216

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,946.54	On accunt of space required for propelling power	694.77
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks	900.88		
Poop	250.84		
Forecastle			
Round-House		These spaces are the following, viz.:	
Other closed in spaces, if any, as follows:			
In excess of Berthing for Crew	20.56		
		Cubic Metres.	
Gross Tonnage	3,118.82		
Deductions as per contra	694.77		
Registered Tonnage	2,424.05	Total deductions	694.77

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty fourth Shares held by each } Viz.: { WILLIAM JAMES FERNIE, HENRY FERNIE, DAVID FERNIE, } Joint Owners. } Merchants, all of Liverpool, in the County of Lancaster } Sixty-four. 64

Vessel Registered anew, 25th April, 1866, No. 106. Certificate of Registry given up and cancelled and Register closed 25th April, 1866.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the particulars and ownership of the "Denmark," as appears by the Books of Registry of British ships at this port.
Register dated 31st March, 1866.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) (5 rms 1 | 74—H & S 2476)

107 G 4.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the four following sheets of paper, and marked G 4, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

GEO. THOMAS.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

Official Number of Ship 54,945 | Port of Liverpool. | Name of Ship Denmark. | Number and Date of Registry 81 | 1866.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.
1		WILLIAM JAMES FERNIE. HENRY FERNIE, DAVID FERNIE, (Jointly.)	64	24th April, 1866, 11 A. M.	Bill of Sale, dated 21st April, 1866.	The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster.

FORM No. 20. (*Continued.*)

109 Transactions Subsequent to Register.

Col. 8.	SUMMARY					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
	1	THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 24th April, 1866.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

FORM No. 19. 110 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
54,945	"Denmark."	106	1866.	Liverpool.

No., Date, and Port of previous Registry (if any) | Liverpool | 81 | 1866 | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Stockton, in the County of Durham.	1866.	

		Feet.	Tenths.
Number of Decks ..... Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	342	9
Number of Masts ..... Three.	Main breadth to outside of plank	42	25
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	35
Stern ..... Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	5
Build ..... Clincher.	Length of engine-room, if any	56	7
Galleries ..... None.			
Head ..... Three-quarter Female.			
Framework ..... Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

FORM No. 19. (*Continued.*)
111 *Signal Letters (if any).* Transcript of Register.

21—216

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,946.54	On account of space required for propelling power	694.77
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks	900.88		
Poop	250.84		
Forecastle			
Round-House		These spaces are the following, viz	
Other closed in spaces, if any, as follows:			
Excess for Crew	20.56	Cubic Metres.	
Gross Tonnage	3,118.82		
Deductions as per contra	694.77		
Registered Tonnage	2,424.05	Total deductions	694.77

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Vessel registered anew, No. 122, 1872, on alteration of tonnage. Certificate of Registry cancelled and Registry closed 19th August, 1872.

Tonnage altered to 2,425.75 tons. Tonnage altered to 2,120.80 tons, 20-11-66. Tonnage altered to 2,941.20 tons by G. O., No. 133, 1870 (14-2-71.)

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the particulars and ownership of the "Denmark" as appears by the Books of Registry of British ships at this port.
Registry dated 25th April, 1866.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 20.

112 Transactions Subsequent to Register.

Official Number of Ship 45,945	Port of Liverpool. Name of Ship Denmark.	Number and Date of Registry 106 | 1866.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages. and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

113 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4·103] 330

FORM No. 19.

114 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
54,945	"Denmark."	122	1872.	Liverpool.

No., Date, and Port of previous Registry (if any) | Liverpool | 106 | 1866 | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Stockton, in the County of Durham.	1866.	

		Feet.	Tenths.
Number of Decks ..... Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	342	9
Number of Masts ..... Three.	Main breadth to outside of plank	42	2
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at midships	20	3
Stern ..... Round.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	36	
Build ..... Clench.	Length of engine-room, if any	56	7
Galleries ..... None.			
Head ..... Three-quarter Female.			
Framework ..... Iron.			

PARTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Inverted. Direct Acting.	British.	1866.	Blare & Co., Stockton-on-Trees.	63 inches.	22 inches.	350

FORM No. 19. (*Continued.*)

115 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,946.54	On accunt of space required for propelling power	782.53
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	147.99
Space or spaces between decks (2nd and 3rd)	900.88		
Ditto (3rd and 4th)	872.40		
Forecastle			
Round-House	3.91	These spaces are the following, viz.:	
Other closed in spaces, if any, as follows:			
		Cubic Metres.	
Gross Tonnage	3,723.73	10,538,16	
Deductions as per contra	930.32	2,632.80	
Registered Tonnage	2,793.41	7,905.36 Total deductions	930.32

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

William Boyd Macalister, of Drury Buildings, Water street, Liverpool, County of Lancaster, appointed the person to whom the management of the ship is intrusted by and on behalf of the owner, by letter dated 5th February, 1876, under the seal of the National Steam Ship Company, Limited, registered Owner of Sixty-four Shares.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I certify the foregoing to be a true copy of the particulars and ownership of the "Denmark," as appears by the Books of Registry of British ships at this port.

Register dated 19th August, 1872. Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

13—216

FORM No. 19.

116 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
45,378	"Louisiana."	282	1862.	Liverpool.

No., Date, and Port of previous Registry (if any)—New ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Jarrow, in the County of Durham.	1862.	

		Feet.	Tenths.
Number of Decks—Two.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	307	2
Number of Masts—Three.	Main breadth to outside of plank	39	9
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	25	7
Stern—Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards		
Build—Clincher.	Length of engine-room, if any	50	9
Galleries—None.			
Head—Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							300

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,099.20	On account of space required for propelling power	523.72
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks (Cabin)	67.32	These spaces are the following, viz.	
Poop			
Forecastle			
Round-House			
Other closed in spaces, if any, as follows:			
		Cubic Metres.	
Gross Tonnage	2,166.52		
Deductions as per contra	523.72		
Registered Tonnage	1,642.80	Total deductions	523.72

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { WILLIAM JAMES FERNIE, of Liverpool, in the County of Lancaster, Merchant. } Sixty-four. 64

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of the "Louisiana" as appears by the Books of Registry of British ships at this port.

Registry dated 20th October, 1862.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the three following sheets of paper, and marked G 5, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL.

GEO. THOMAS. *United States Vice and Deputy Consul at Liverpool, England, Commissioner.*

Official Number of Ship 45,378 | Port of Liverpool. Name of Ship Lousiana. | Number and Date of Registry 282 | 1862.

Col. 1. Number of Transaction.	Col. 2. Letter denoting Mortgages and Certificates of Mortgage.	Col. 3. Name of Person from whom Title is derived.	Col. 4. Number of Shares affected.	Col. 5. Date of Registry.	Col. 6. Nature and Date of Transaction.	Col. 7. Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.
1		WILLIAM JAMES FERNIE.	64	3rd August, 1863, 2 P. M.	Bill of Sale, dated 31st July, 1863.	The British and American Southern Steam Navigation Company, having its principal place of business at Liverpool, in the County of Lancaster.
2		The British and American Southern Steam Navigation Company.	64	5th Dec., 1863, 11.30 A. M.	Bill of Sale, dated 25th November, 1863.	The National Steam Navigation Company, Limited, having its principal place of business at Liverpool aforesaid.

FORM No. 20. (*Continued.*)

120 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
	2	THE NATIONAL STEAM NAVIGATION COMPANY, LIMITED. Total, 5th December, 1863.			64	
		Registered anew 20th April, 1864, No. 175. Change of ownership. Certificate of Registry delivered up and cancelled 20th April, 1864. Registry closed.				

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

14—216

FORM No. 19.

121 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
45,378	"Louisiana."	175	1864.	Liverpool.

No., Date, and Port of previous Registry (if any) | 282 | 1862 | Liverpool | Registered anew on change of Ownership.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Jarrow, in the County of Durham.	1862.	

		Feet.	Tenths.
Number of Decks—Two.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	307	2
Number of Masts—Three.	Main breadth to outside of plank	39	9
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	25	7
Stern—Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards		
Build—Clencher.	Length of engine-room, if any	50	9
Galleries—None.			
Head—Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							300

FORM No. 19. (*Continued.*)
122 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,099.20	On account of space required for propelling power	523.72
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks (Cabin)	67.32		
Poop			
Forecastle			
Round-House			
Other closed in spaces, if any, as follows:		These spaces are the following, viz	
		Cubic Metres.	
Gross Tonnage	2,166.52		
Deductions as per contra	523.72		
Registered Tonnage	1,642.80	Total deductions	523.72

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Sold to Foreigners as per letter from Owners, dated 11th March, 1870. Certificate of Registry delivered up and cancelled, and Registry closed 15th March, 1870.

Tonnage altered to 1,683 23-100 tons, 11th October, 1866. Tonnage altered to 1,473 23-100 tons by alteration of engine space, 11-12-66.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of the "Louisiana" as appears by the Books of Registry of British ships at this port.

Registry dated 20th April, 1864.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 20.

123 Transactions Subsequent to Register.

Official Number of Ship 45,378	Port of Liverpool. Name of Ship Lousiana.	Number and Date of Registry 175 | 1864.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages. and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

124 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4·103] 330

15—216

FORM No. 19. Transcript of Register.

125 *Signal letters (if any).*

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
47,600	"Pennsylvania."	470	1863.	Liverpool.

No., Date, and Port of previous Registry (if any)—New Ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Jarrow, in the County of Durham.	1863.	

		Feet.	Tenths.
Number of Decks—Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	341	
Number of Masts—Three.	Main breadth to outside of plank	41	1
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	53
Stern—Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	13
Build—Clencher.	Length of engine-room, if any	40	2
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							300

FORM No. 19. (*Continued.*)

126 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	1,912.50	On account of space required for propelling power	474.61
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks (Cabin)	774.30		
Poop	203.02		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows:		These spaces are the following, viz	
		Cubic Metres.	
Gross Tonnage	2,389.82		
Deductions as per contra	474.61		
Registered Tonnage	2,415.21	Total deductions	474.61

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four 64

Sold to Foreigners as per Bill of Sale and letter from Owners, dated 24th July, 1871. Certificate of Registry delivered up and cancelled and Registry closed 27th July, 1871.

Tonnage altered to 2,388.90 tons, 25–9–1866.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing, together with copy transaction annexed, to be a true copy of the Registry of the "Pennsylvania" as appears by the Books of Registry of British ships at this port.

Registry dated 26th November, 1863.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

127 G 6.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the one following sheet of paper, and marked G 6, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

GEO. THOMAS.

128 FORM No. 20.

Transactions Subsequent to Register.

Official Number of Ship 47,600	Port of Liverpool. Name of Ship Pennsylvania.	Number and Date of Registry 470 | 1863.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, from "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

129 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

FORM No. 19.

130 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
50,247	"Erin."	323	1864.	Liverpool.

No., Date, and Port of previous Registry (if any)—New Vessel.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	

		Feet.	Tenths.
Number of Decks—Three.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	370	4
Number of Masts—Three.	Main breadth to outside of plank	41	1
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	35
Stern—Elliptical.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	1
Build—Clencher.	Length of engine-room, if any	43	5
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

FORM No. 19. (*Continued.*)

131 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,191.51	On account of space required for propelling power	511.93
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks (Lower Spar Deck)	903.83	These spaces are the following, viz	
Poop	223.35		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows:			
		Cubic Metres.	
Gross Tonnage	3,318.69		
Deductions as per contra	511.93		
Registered Tonnage	2,806.76	Total deductions	511.93

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each — Viz.: { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four 64

Regi-tered anew on alteration of tonnage, No. 161, 1872. Certificate of Registry delivered up and cancelled and Registry closed 10th October, 1872.

Tonnage altered to 2,765.97 tons, 27-10-1866. Tonnage altered to 3,352.50 tons, 14-3-71.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I certify the foregoing to be a true copy of the Registry of the "Erin," as appears by the Books of Registry of British ships at this port. Registry dated 25th July, 1864.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited, are defendants, the document comprised in this and the four following sheets of paper, and marked G 7, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

GEO. THOMAS.

Official Number of Ship 50,274	Port of Liverpool.	Number and Date of Registry 233 | 1864.
	Name of Ship Erin	

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, from "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

134 Transactions Subsequent to Register.

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4·103] 330

FORM No. 19.

135 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
50,274	"Erin."	161	1872.	Liverpool.

No., Date, and Port of previous Registry (if any) | 323 | 1864 | Liverpool | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	Palmer Bros.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	370	4
Number of Masts—Three.	Main breadth to outside of plank	41	1
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at midships	20	35
Stern—Round.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	35	3
Build—Clencher.	Length of engine-room, if any	43	5
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Vertical Direct Acting.	British.	1864.	Palmer Bros. & Co., Newcastle.	63 inches.	3 ft. 6 in.	350

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,191.51	On account of space required for propelling power	604.43
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	162.70
Space or spaces between decks (2nd and 3rd)	903.83		
Ditto (3rd and 4th)	857.36		
Forecastle			
Round-House	4.23	These spaces are the following, viz.:	
Other closed in spaces, if any, as follows:			
	Cubic Metres.		
Gross Tonnage	3,956.93		
Deductions as per contra	767.13		
Registered Tonnage	3,189.80	Total deductions	767.13

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Regi-tered anew on alteration of tonnage, No. 198, 1873. Certificate of Registry cancelled and Registry closed 5th December, 1873.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I certify the foregoing to be a true copy of the Registry of the "Erin," as appears by the Books of Registry of British ships at this port. Registry dated 10th October, 1872.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19.

137 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
50,274	"Erin."	198	1873.	Liverpool.

No., Date, and Port of previous Registry (if any) | 161 | 1872 | Liverpool | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	Palmer Bros. & Co., Newcastle.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	370	4
Number of Masts—Three.	Main breadth to outside of plank	41	1
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	35
Stern—Elliptic.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	35	3
Build—Clench.	Length of engine-room, if any	66	5
Galleries—None.			
Head—Demi-Woman.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Inv. Vertical Compound Direct.	British.	1873.	John Penn & Sons, London.	55 & 90 inches.	4 feet.	420

FORM No. 19. (*Continued.*) 138 *Signal Letters (if any).* Transcript of Register.

18—216

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,191.51	On account of space required for propelling power	1,268.68
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	193.13
Space or spaces between decks (2nd and 3rd)	903.83	These spaces are the following, viz. :	
Ditto (3rd and 4th)	857.36		
Forecastle			
Round-Houses	11.91		
Other closed in spaces, if any, as follows :			
	Cubic Metres.		
Gross Tonnage	3,964.61 / 11,219.85		
Deductions as per contra	1,461.81 / 4,136.91		
Registered Tonnage	2,502.80 / 7,082.94	Total deductions	1,461.81

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz. : { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four 64

Registered anew on alteration of tonnage, No. 159, 1877. Certificate of Registry given up and cancelled and Register closed 3rd July, 1877.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I certify the foregoing to be a true copy of the Register of the "Erin," as appears by the Books of Registry of British ship at this port.

Register dated 5th December, 1873.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19.

139 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
50,274	"Erin."	159	1877.	Liverpool.

No., Date, and Port of previous Registry (if any) | 198 | 1873 | Liverpool | De novo on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	Palmer Bros. & Co., Newcastle-on-Tyne.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	418	8
Number of Masts—Three.	Main breadth to outside of plank	41	2
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	4
Stern—Elliptic.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	35	3
Build—Clench.	Length of engine-room, if any	57	
Galleries—None.			
Head—Demi-Woman.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Inv. Vertical Compound Direct Act'g.	British.	1873.	John Penn & Son, London.	55 & 90 inches.	4 feet.	420

FORM No. 19. (*Continued.*) Transcript of Register.

140 *Signal letters (if any).*

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,529.52	On account of space required for propelling power	1,464.72
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	202.08
Space or spaces between decks (2nd and 3rd)	1,030.92	These spaces are the following, viz.:	
Ditto (3rd and 4th)	986.61		
Forecastle			
Round-House	25.90		
Other closed in spaces, if any, as follows:			
Chart House	4.29		
	Cubic Metres.		
Gross Tonnage	4,577.24 12.953.59		
Deductions as per contra	1,666.80 4,717.05		
Registered Tonnage	2,910.44 8,236.54	Total deductions	1,666.80

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Willliam Boyd Macalister, of 21 Water street, Liverpool, is appointed the person to whom the management of the ship is intrusted by and on behalf of the owners per letter dated 5th July, 1877.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I certify the foregoing is a true copy of the Register of the "Erin," as appears by the Books of Registry of British ships at this port. Registry dated 3rd July, 1877.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19.

141 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
51,401	"Helvetia."	543	1864.	Liverpool.

No., Date, and Port of previous Registry (if any)—New Ship.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	371	5
Number of Masts—Three.	Main breadth to outside of plank	41	2
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at midships	20	3
Stern—Elliptical.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	28	1
Build—Clench	Length of engine-room, if any	43	6
Galleries—None.			
Head—Three-quarter Female.			
Framework—Iron.			

PAKTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2							350

FORM No. 19. (*Continued.*)
142 *Signal Letters (if any).* Transcript of Register.

19—216

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,189.28	On account of space required for propelling power	513.73
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	
Space or spaces between decks	904.15	These spaces are the following, viz. :	
Poop	225.30		
Forecastle			
Round-House			
Other closed in spaces, if any, as follows :			
		Cubic Metres.	
Gross Tonnage	3,318.73		
Deductions as per contra	513.73		
Registered Tonnage	2,805.00	Total deductions	513.73

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz. : { The National Steam Navigation Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Registered anew, No. 146, 1872, on alteration of tonnage. Certificate of Registry delivered up and cancelled and Register closed 19th September, 1872.

Tonnage altered to 2,769 48-100 tons by allowance of engine space, 22-11-66. Tonnage altered to 3,379 51-100 tons by General Order No. 133, 1870.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the above particulars of the "Helvetia," together with copy transaction annexed, to be a true copy of the Registry of this vessel, as appears by the Books of Registry of British ships at this port.

Register dated 31st December, 1864.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

143 G 8.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff, and the National Steamship Company, Limited. are defendants, the document comprised in this and the four following sheets of paper, and marked G 8, was produced and shown to Geo. Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

GEO. THOMAS.

Official Number of Ship	Port of	Name of Ship	Number and Date of Registry
51,401	Liverpool.	Helvetia.	543 | 1864.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.	Col. 6.	Col. 7.
Number of Transaction.	Letter denoting Mortgages and Certificates of Mortgage.	Name of Person from whom Title is derived.	Number of Shares affected.	Date of Registry.	Nature and Date of Transaction.	Name, Residence and Occupation of Transferee, Mortgagee or other Person acquiring Title or Power.

Ownership altered to "The National Steam Ship Company, Limited," per Board's Order, dated 17th April, 1869, from "The National Steam Navigation Company, Limited."

FORM No. 20. (*Continued.*)

Transactions Subsequent to Register.

145

Col. 8.	SUMMARY.					Col. 14.
	Col. 9.	Col. 10.	Col. 11.	Col. 12.	Col. 13.	
Number and Account of subsequent Transactions, showing how interest disposed of.	Number of Transaction under which Title acquired.	Names of Owners.	Mortgages and Certificates of Mortgage.	Names of Mortgagees and Attorneys under Certificates of Mortgage.	Number of Shares.	Remarks.
		THE NATIONAL STEAM SHIP COMPANY, LIMITED. Total, 19th April, 1869.			64	

GEO. THOMAS, Assistant Registrar.

No. 362.—Copy of Transaction, &c., &c.

N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, 82 Basinghall Street, London, E. C.

F & T 12,000 7—78 [4-103] 330

FORM No. 19. 146 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
51,401	"Helvetia."	146	1872.	Liverpool.

No., Date, and Port of previous Registry (if any) | 543 | 1864 | Liverpool | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	Palmer Bros. & Co., Newcastle-on-Tyne.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	371	5
Number of Masts—Three.	Main breadth to outside of plank	41	2
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	3
Stern—Round.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	28	1
Build—Clench.	Length of engine-room, if any	43	6
Galleries—None.			
Head—Female.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Inverted Direct Acting.	British.	1864.	Palmer Bros. & Co., Newcastle-on-Tyne.	63 inches.	42 inches.	350

FORM No. 19. *(Continued.)*

147 *Signal letters (if any).* Transcript of Register.

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,189.28	On account of space required for propelling power	595.05
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	168.29
Space or spaces between decks (2nd and 3rd)	904.15		
" Ditto (3rd and 4th)	876.80		
Forecastle			
Round-House or Chart House	4.33	These spaces are the following, viz.:	
Other closed in spaces, if any, as follows:			
	Cubic Metres.		
Gross Tonnage	3,974.56 / 11,248.00		
Deductions as per contra	763.34 / 2,160.25		
Registered Tonnage	3,211.22 / 9,087.75	Total deductions	763.34

Name of Master ____ Certificate of { Service No. / Competency No.

Names, Residence and Description of the Owners, and Number of Sixty-fourth Shares held by each } Viz.: { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

Certificate of Registry cancelled and Registry closed 27th February, 1874. Vessel Registered anew, No. 31, 1874, on alteration of tonnage.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing is a true copy of the particulars of the "Helvetia," as appears by the Books of Registry of British ships at this port.

Registry dated 19th September, 1872. Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1/74—H & S 2476

20—216

FORM No. 19.

148 *Signal letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
51,401	"Helvetia."	31	1874.	Liverpool.

No., Date, and Port of previous Registry (if any) | 146 | 1872 | Liverpool | Registered anew on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Steam screw.	Jarrow, in the County of Durham.	1864.	Palmer Bros. & Co., Newcastle-on-Tyne.

		Feet.	Tenths.
Number of Decks—Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	371	5
Number of Masts—Three.	Main breadth to outside of plank	41	2
Rigged—Barque.	Depth in hold from tonnage deck to ceiling at mid-ships	20	3
Stern—Elliptic.	Depth in hold from upper deck to ceiling at mid-ships, in the case of three decks and upwards	35	6
Build—Clench.	Length of engine-room, if any	66	5
Galleries—None.			
Head—Demi-Woman.			
Framework—Iron.			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Vertical Direct Acting.	British.	1874.	John Penn & Son, London.	55 & 90 inches.	4 feet.	420

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,189.28	On account of space required for propelling power	1,274.36
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from Goods or Stores of every kind not being the personal property of the Crew	200.67
Space or spaces between decks (2nd and 3rd)	904.15		
Ditto (3rd and 4th)	876.80		
Forecastle			
Round-Houses	12.13	These spaces are the following, viz. :	
Other closed in spaces, if any, as follows :			
		Cubic Metres.	
Gross Tonnage	3,982.36	11,270.08	
Deductions as per contra	1,475.03	4,174.27	
Registered Tonnage	2,507.33	7,095.81	Total deductions 1,475.03

Name of Master

Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz. : { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

De novo, 210, 1877, on alteration of tonnage. Certificate of Registry given up and cancelled and Register closed 23rd October, 1877.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing to be a true copy of the Registry of the "Helvetia," as appears by the Books of Registry of British ships at this port.

Register dated 27th February, 1874.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 361.) 5 rms 1 | 74—H & S 2476

FORM No. 19.

150 *Signal Letters (if any).* Transcript of Register.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.		
51,401	"Helvetia."	210	1877.	Liverpool.

No., Date, and Port of previous Registry (if any) | 31 | 1874 | Liverpool | De novo on alteration of Tonnage.

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
British.	Screw steamer.	Jarrow, in the County of Durham.	1864.	Palmer Bros. & Co., Newcastle-on-Tyne, and lengthened in 1877 by Laird Bros., Birkenhead.

		Feet.	Tenths.
Number of Decks ..... Four.	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post	419	2
Number of Masts ..... Three.	Main breadth to outside of plank	41	2
Rigged ..... Barque.	Depth in hold from tonnage deck to ceiling at midships	20	3
Stern ..... Elliptic.	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards	35	6
Build ..... Clench.	Length of engine-room, if any	67	
Galleries ..... None.			
Head ..... Demi-Woman.			
Framework ..... Iron.			

PARTICULARS OF ENGINES (IF ANY)

No. of Engines.	Description.	Whether British or Foreign Made.	When Made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)
2	Vertical Direct Acting.	British.	1874.	John Penn & Sons, London.	55 & 90 inches.	4 feet.	420

FORM No. 19. (*Continued.*)

151 *Signal Letters (if any).* Transcript of Register.

21—216

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under Tonnage Deck	2,523.23	On account of space required for propelling power	1,468.07
Closed in spaces above the Tonnage Deck, if any		On account of spaces occupied by Seamen or Apprentices	
Space or spaces between decks (2nd and 3rd)	1,008.72	and appropriated to their use and kept free from Goods	
Ditto (3rd and 4th)	1,024.72	or Stores of every kind not being the personal property	
Forecastle		of the Crew	198.07
Round-Houses	31.04	These spaces are the following, viz. :	
Other closed in spaces, if any, as follows :			
	Cubic Metres.	Forecastle (Seamen)	
		Side House (do.)	
		Do. (Officers)	
Gross Tonnage	4,587.71	12,983.22	
Deductions as per contra	1,666.14	4,715.18	
Registered Tonnage	2,921.57	8.268.04 Total deductions	1,666.14

Name of Master — Certificate of { Service No. / Competency No.

Names, Residence, and description of the owners, and Number of Sixty-fourth Shares held by each } Viz. : { The National Steam Ship Company, Limited, having its principal place of business at Liverpool, in the County of Lancaster } Sixty-four. 64

William Boyd Macalister, of 21 Water street, Liverpool, aforesaid, is appointed the person to whom the management of the ship is intrusted by and on behalf of the owners, per letter dated 23rd October, 1877, under the seal of the "National Steam Ship Company," registered Owner of Sixty-four Shares.

CUSTOM HOUSE, LIVERPOOL, 6th June, 1879.

I hereby certify the foregoing to be a true copy of the particulars and ownership of the "Helvetia," as appears by the Books of Registry of British ships at this port.

Register dated 23rd October, 1877.

Assistant Registrar, GEO. THOMAS.

NOTE.—If there are more owners than one the Registrar is requested to distinguish the Managing Owner, by the letters "M. O." against his name.
N. B.—To be addressed in an envelope to the Registrar-General of Shipping and Seamen, Adelaide Place, London.

(No. 3611) 5 rms 1 | 74—H & S 2476

152 At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff and The National Steamship Company, Limited, are defendants, the document comprised in this sheet of paper, and marked H, was produced and shown to George Thomas, and by him deposed unto at the time of his examination before me.

W. P. PAULL,
United States Vice and Deputy Consul,
Liverpool, England, Commissioner.

GEO. THOMAS.

Certificate of Incorporation of the National Steamship Company, Limited.

Change of Name.

I hereby certify that the Steamship Company, Limited, having, with the sanction of a special resolution of the said company, and with the approval of the Board of Trade, changed its name, is now called The National Steamship Company, and I have entered such new name on the register accordingly.

Given under my hand at London, this eighth day of August, one thousand eight hundred and sixty-seven.

(Signed) E. C. CURZON,
Registrar of Joint Stock Companies.

Companies' Act, 1862, s. 13.

At the execution of a commission for the examination of witnesses, wherein Rebecca Gray, administratrix, &c., is plaintiff and The National Steamship Company, Limited, are defendants, the certificate of change of name, of which this paper writing pur-
153 ports to be a copy, was produced and shown to George Thomas, and by him deposed to at the time of his examination before me, and this paper writing having been by me collated with the said original certificate, I certify the same to be a full and true copy of the said original document.

W. P. PAULL,
Vice Consul of the United States of America at
Liverpool, England, Commissioner.

No. 3632, C. N. L. 3464.

Certificate of Incorporation of the Steamship Company, Limited.

I hereby certify that the Steamship Company, Limited, is this day incorporated under the companies' act, 1862, and that this company is limited.

Given under my hand, at London, this first day of July, one thousand eight hundred and sixty seven.

(Signed) E. C. CURZON,
Registrar of Joint Stock Companies.

Fee: £50.
S. 18.

Deposition of witness, produced, sworn, and examined, the eighteenth day of June, in the year one thousand eight hundred and seventy-nine, at the United States consulate, Liverpool, England, before William P. Paull, United States vice and deputy consul, under and by virtue of a commission issued out of the circuit court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Rebecca Gray, administratrix, &c., is plaintiff and The National Steamship Company are defendants, as follows:

154 GEORGE THOMAS, residing at 33 Prospect Vale, Fairfield, near Liverpool, clerk of the long room, and assistant register of shipping in Liverpool, aged 49 years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

First. To the first interrogatory he saith: My name is George Thomas; age, 49 years; residence, 33 Prospect Vale, Fairfield, near Liverpool; I am a long room clerk of the Liverpool custom-house and assistant register of shipping in Liverpool.

Second. To the second interrogatory he saith: Yes; I have.

Third. To the third interrogatory he saith: I produce and annex to this, my deposition, official copies of the whole of the registers of the vessels referred to in this interrogatory, marked respectively G, 1 to 8, inclusive.

Fourth. To the fourth interrogatory he saith: The documents produced by me in answering the last preceding interrogatory show all the dates at which the owners of the said vessels were respectively placed on the register, and all changes of registration thereof which have taken place.

Fifth. To the fifth interrogatory he saith: Save as appears by the said documents in the case of the Denmark, Virginia, and Louisiana, the change of ownership was not by bill of sale.

Sixth. To the sixth interrogatory he saith: There is no document of record in our office by which any change of ownership was made. The vessels were registered in the name of the defendant company by order of the Board of Customs, made on the 17th April, 1869, upon an application dated 15th April, 1869, by the said com-

155 pany to the said board, an official copy of which application I produce, and annex to this my deposition, marked H.

The certificates of incorporation and change of name therein referred to accompanied the said application, and were afterwards returned to the secretary of the defendant company. I believe the documents now produced and shown to me are the said certificates.

Seventh. To the seventh interrogatorry he saith: I have stated al the facts in my knowledge in my answer to the preceding interrogatories.

Eighth. To the eighth interrogatory he saith: I have already done so in my answer to the third interrogatory.

Last. To the last interrogatory he saith: No, I do not.

Cross-Interrogatories.

First cross. To the first cross-interrogatory he saith: I made the entries relating to the registration of the name of the defendant company as owners in the case of all the vessels referred to in this interrogatory.

Second cross. To the second cross-interrogatory he saith: I have no further knowledge of the facts referred to than in my answers to the interrogatories in chief.

Third cross. To the third cross-interrogatory he saith: I have already answered this interrogatory in my answer to the first and and second cross-interrogatories.

Fourth cross. To the fourth cross-interrogatory he saith: I know of no such bill of sale.

Fifth cross. To the fifth cross-interrogatory he saith: I have no personal knowledge of the genuine character of any of the writings referred to.

GEO. THOMAS.

W. P. PAULL,
Commissioner.

156 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 18th June, 1879, before—

W. P. PAULL,
United States Vice and Deputy Consul at Liverpool, England, Commissioner.

The President of the United States of America to S. V. Packard, Esq., the consul, or the vice-consul, at Liverpool, England, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority diligently to examine upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories and redirect interrogatories hereunto annexed, Edward King Hayward, secretary of the defendant, and William Rome, chairman of the board of directors, or such other person who may be such chairman, in Liverpool, England, as witnesses on the part of the plaintiff in a certain cause now pending undetermined in the circuit court of the United States of America for the southern district of New York, wherein Rebecca Gray, administratrix, etc., is plaintiff and The National Steamship Company are defendants.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up, under your hand and seal, directed to Lauterbach & Spingarn, Esqs., 206 Broadway, in the city of New York,
157 as soon as may be convenient after the execution of this commission; and that you return the same when executed, as

above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, this 12th day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the Southern District of New York.

(See "Schedule A," pp. 7 to 21.)

Interrogatories to be Administered, in pursuance of Commission Annexed, to the Witnesses intended in the said Commission.

First interrogatory. What is your name, occupation, and place of residence?

Second interrogatory. What is your official position or situation as an officer of the defendant, The National Steamship Company?

Third interrogatory. Were you an officer of the National Steam Navigation Company, late a company existing under the law of the United Kingdom of Great Britain and Ireland, known as the companies' act of 1862, or other act, acts, or law?

Fourth interrogatory. Upon the termination of the existence of said last-mentioned company, if the said company last mentioned has ceased to exist, what officials of that company became officials of the defendant, if any said officials of the one company ceasing to exist became officials of the other other, this defendant?

158 Fifth interrogatory. Was an agreement made and entered into by and between the two companies mentioned in the last preceding interrogatory, on or about August 16, 1867, in which agreement the liquidators of the National Steam Navigation Company, William Rome, of Liverpool, in the county Lancaster, merchant, and Charles Edward Dixon, of the same place, merchant, were parties; if yea, in whose possession and custody is the said agreement?

Sixth interrogatory. Have you access to the said agreement, or can you obtain access to the same?

Seventh interrogatory. Is the annexed printed Schedule "A" a copy of the said agreement; if not, in what particulars is the said Schedule "A" not an accurate copy of the said agreement?

Eighth Interrogatory. Was or was not the National Steam Navigation Company, at the time of the execution and delivery of the said agreement of the 16th day of August, 1867, possessed of certain steamships or vessels named the "Queen," "Denmark," "Helvetia," "Erin," "Pennsylvania," "Virginia," and "Louisiana"?

Ninth interrogatory. Did the said The National Steam Navigation Company, at any time subsequent to the execution and delivery of the said agreements, by an instrument or instruments in writing, either under seal or attested by a witness or witnesses, or otherwise, sell, assign, transfer, and set over the said steamships, or either of them, to this defendant; if yea, state in whose possession the said

instrument in writing now is, where the same is, whether you have access thereto or whether you can obtain access thereto; and, if not, state the facts and circumstances of your inability to obtain access thereto?

159 Tenth interrogatory. If you have the custody of or control over, or can obtain access to the said instrument or instruments, in writing, of the said assignment, transfer, or setting over of the said steamships, or either of them, please have or cause copies of the same to be annexed to your answer to this interrogatory.

Last interrogatory. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same full and at large in your answer.

LAUTERBACH & SPINGARN,
Solicitors for Plaintiff, 206 *Broadway, New York City.*

United States Circuit Court, Southern District of New York.

REBECCA GRAY, Administratrix, &c., Plaintiff,
against
THE NATIONAL STEAMSHIP COMPANY, Defendants.

Interrogatories to be administered to Edward King Hayward
160 and William Rome, of Liverpool, witnesses to be examined under the annexed commission on behalf of the defendants in this cause:

First. When were the vessels named in the eighth direct interrogatory actually sold, and when, under such sale, was a delivery of such vessels made to the defendants?

Second. If you shall state in answer to the previous interrogatory a sale and delivery, and the date or dates thereof, state whether such sale was absolute and such delivery unconditional.

JOHN CHETWOOD,
Attorney for Defendant.

United States Circuit Court, Southern District of New York.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAMSHIP COMPANY. } In Equity.

Redirect interrogatories to witnesses Hayward and Rome.

First. If you shall have answered the first interrogatory of the defendant in the affirmative as to a sale and delivery of the vessels thereon interrogated by the National Steam Navigation Company to the defendant, state how such sale was made, if verbally or by writing; if by writing, annex a copy thereof to your deposition if you have control over or possession of or access thereto; if you
161 have not such control or access thereto, state your memory

thereof as to the contents thereof, and state who has the custody and control thereof of said writing, where the same is.

Second. If you shall have stated that an instrument in writing was the means of the sale and transfer of the said vessels, state if the said writing was not the agreement mentioned and referred to in the fifth interrogatory of the plaintiff heretofore propounded to you, if the same was the only writing used for such sale and transfer; or, if not the only one, what other writing was used therefor, and annex a copy thereof, if in your possession or under your control, or you have access thereto; if you have not, state the contents thereof as near as your memory will permit, and where the other instrument now is, or who has control of the same.

Third. If you shall have answered that the sale in the second interrogatory of the defendant as therein interrogated was absolute, state in what particulars the same was absolute, and your meaning as to the said sale being absolute.

LAUTERBACH & SPINGARN,
Solicitors for Plaintiff.

United States Circuit Court, Southern District of New York. In Equity.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAM NAVIGATION COMPANY.

The annexed interrogatories are hereby settled by consent,
162 subject to all legal objection and exception.
January 27, 1879.

LAUTERBACH & SPINGARN,
Solicitors for Plaintiff.
JOHN CHETWOOD,
Solicitor for Defendants.

The execution of this commission appears in certain schedules hereunto annexed.

STEPHEN V. PACKARD,
U. S. Consul, Commissioner.

UNITED STATES CONSULATE, LIVERPOOL.

Deposition of witnesses produced, sworn, affirmed, and examined the 7th day of June, in the year one thousand eight hundred and seventy nine, at the United States consulate, Liverpool, before Stephen V. Packard, United States consul, commissioner, under and by virtue of a commission issued out of the circuit court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Rebecca Gray, administratrix, etc., is plaintiff and the National Steamship Company are defendants, as follows:

EDWARD KING HAYWARD, of Moore Lane, Great Crosby, near Liverpool, occupation, secretary, aged 45 years and upwards, being

duly and publicly affirmed pursuant to the directions hereunto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Edward King Hayward; secretary; residence, Moore Lane, Great Crosby, near Liverpool.

Second. To the second interrogatory he saith: I am secretary to the National Steamship Company, Limited.

163 Third. To the third interrogatory he saith: I was secretary to the National Steam Navigation Company, Limited, incorporated under the Companies' Act of 1862.

Fourth. To the fourth interrogatory he saith: I believe the whole of the officials of the navigation company became officials of the defendant company. The National Steam Navigation Company was finally dissolved in November, 1870.

Fifth. To the fifth interrogatory he saith: There was an agreement entered into between the companies mentioned in the last preceding interrogatory on the 16th August, 1867. The said agreement is in possession of the defendant company.

Sixth. To the sixth interrogatory he saith: I can.

Seventh. To the seventh interrogatory he saith: With the exceptions of one hundred, which has been printed in mistake for ten shillings, in the thirteenth line of page three, and a few typographical errors, I believe it to be a correct copy. I have had it carefully compared with the original.

Eighth. To the eighth interrogatory he saith: It was.

Ninth. To the ninth interrogatory he saith: Except that the vessels were put into the name of the defendant company from that of the National Steam Navigation Company, Limited, in the books of the registrar of shipping, no transfer was made of the said vessels save by delivery in accordance with the agreement of the 16th August, 1867.

Tenth. To the tenth interrogatory he saith: There was none.

Last. To the last interrogatory he saith: I have heard the answer given by Mr. Rome to this interrogatory, which I confirm as being true in every particular.

164 Cross-interrogatories:

First cross. To the first cross-interrogatory he saith: At the date of the said agreement, viz., the 16th August, 1867.

Second cross. To the second cross-interrogatory he saith: Said sale and delivery were absolute and unconditional.

Re-direct interrogatories:

First re-direct. To the first re-direct interrogatory he saith: Such sale was made by delivery, in accordance with said agreement of the 16th August, 1867; there was no writing other than such agreement.

Second re-direct. To the second re-direct interrogatory he saith: The agreement of 16th August, 1867, was the only writing under which the vessels were sold.

Third re-direct. To the third re-direct interrogatory he saith: The sale was absolute in the following particular, namely, that the vessels ceased to be the property of the National Steam Navigation Company, Limited, and became the property of the National Steamship Company, Limited, and have since remained the property of the latter company.

E. K. HAYWARD.

Examination taken, reduced to writing, and by the witness subscribed and affirmed to, this 7th day of June, 1879, before—

S. V. PACKARD,
U. S. Consul Commissioner.

WILLIAM ROME, of Parkfield Road, Liverpool, by occupation chairman of the board of directors, aged 56 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

165 First. To the first interrogatory he saith: William Rome; I am a merchant and shipowner; I reside at Parkfield Road, Liverpool.

Second. To the second interrogatory he saith: Chairman of the board of directors.

Third. To the third interrogatory he saith: I was chairman of the board of directors of the National Steam Navigation Company, Limited, which was incorporated under the act of 1862.

Fourth. To the fourth interrogatory he saith: To the best of my belief the whole of the officials of the National Steam Navigation Company, Limited, became the officials of the defendant company upon the transfer of the property from the former to the latter. The National Steam Navigation Company, Limited, was not dissolved until the latter part of 1870.

Fifth. To the fifth interrogatory he saith: There was an agreement entered into between the companies mentioned in the last preceding interrogatory on the 16th August, 1867. The agreement is in the possession of the defendant company.

Sixth. To the sixth interrogatory he saith: Yes.

Seventh. To the seventh interrogatory he saith: I have not compared the Schedule "A" with the original agreement.

Eighth. To the eighth interrogatory he saith: Yes, it was.

Ninth. To the ninth interrogatory he saith: Except that the vessels were put into the name of the defendant company from that of the National Steam Navigation Company, Limited, in the books of the registrar of shipping, no transfer was made of the vessels except by delivery to the defendant company, in accordance with the said agreement of the 16th August, 1867.

Tenth. To the tenth interrogatory he saith: There was none.

166 Last. To the last interrogatory he saith: The steamships were delivered to the defendant company by the liquidators of the National Steam Navigation Company, Limited, on the 16th

August, 1867, and have from that time to the present been the property of the defendant company, who have ever since managed the vessels and received the freights, and have entered the vessels in their name on clearing from the ports from which they sailed, have advertised them in their own name, and were the actual owners of the said steamers. Subsequently the steamers were transferred by the registrar of shipping into the name of the defendant company in the custom house books on the fact that they had been transferred and delivered to the defendant company, being communicated to him. The National Steam Navigation Company, Limited, went into liquidation on the 15th August, 1867, and did no business and possessed no property subsequent to the 16th August, 1867, date of said agreement. The Navigation Company was finally dissolved on the 2d November, 1870, and has now ceased to exist. On the defendant company taking over the said steamers on the 16th August, 1867, and commencing business, a set of books was opened by them, in which the transactions of the defendant company were entered.

Cross-interrogatories:

First cross. To the first cross-interrogatory he saith: The date of the said agreement, namely, the 16th August, 1867.

Second cross. To the second cross-interrogatory he saith: The sale and delivery was absolute and unconditional.

Redirect interrogatories:

First redirect. To the first redirect-interrogatory he saith: The said sale was made by delivery in accordance with the said agreement, and not by any other writing than said agreement.

167 Second redirect. To the second redirect interrogatory he saith: The agreement of the 16th August, 1867, was the only writing under which the vessels were sold.

Third redirect. To the third redirect interrogatory he saith: The sale was absolute in the following particulars, namely, that the steamers ceased to be the property of the National Steam Navigation Company, Limited, and became the property of the defendant company, and have ever since remained their property.

W. ROME.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 7th day of June, 1879, before—

S. V. PACKARD,
U. S. Consul Commissioner.

168 U. S. Circuit Court, Southern District of New York. In Equity.

REBECCA GRAY, Administratrix, &c.,
against
THE NATIONAL STEAMSHIP COMPANY, Defendant.

Defendant's Testimony.

The libel, claim, bond for value, answer, and decree, in the suit in the U. S. district court, southern district of New York, between the Lehigh Coal & Navigation Company and Rebecca Gray, admin'x, &c., libellants, and the steamship Pennsylvania, The National Steamships Company, claimants, and the decree of the U. S. circuit court, on the appeal in same case.

169 *The Libel.*

To the Honorable Samuel Blatchford, judge of the district court of the United States within and for the Southern district of New York:

The libel of the Lehigh Coal and Navigation Company, a company duly incorporated under the laws of the State of Pennsylvania, and of Rebecca Gray, administratrix, &c., of Wilson W. Gray, deceased, of Bucks county, in the State of Pennsylvania, against the steamship Pennsylvania, her tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same in a cause of collision, civil, and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter mentioned the said The Lehigh Coal and Navigation Company and the said Wilson W. Gray were joint owners of a certain canal boat, called No. "605," of the said company's line of canal boats, the said company being the owners of a fraction more than one-half thereof, and the said Wilson W. Gray being the owner of a fraction less than a half thereof, and also the master thereof; which said canal boat the said Wilson W. Gray used and employed in transporting freight, to wit, coal from Mauch Chunk, in the State of Pennsylvania, to the city of New York, between which ports she was regularly run during the summer boating season for the purposes aforesaid.

Secondly. That on Wednesday, the twenty-fourth day of October, 1867, the said canal boat "605," with her tackle, apparel, and other furniture, along with thirteen other canal boats, was properly and safely attached to the steam tug boat Princeton, which said steam tug boat Princeton, with the said fourteen canal boats in tow, was

170 proceeding on her voyage from New Brunswick to the city of New York, as she had a perfect right to do. That at about five o'clock of the morning of the said day the said steam tug boat, with the said canal boats in tow, had proceeded on her said voyage as far as about the middle of the Hudson river, nearly opposite Pier No. 2, in the city of New York, and was proceeding on her said voyage up the said Hudson river, as she had a perfect right to do. That at the time and place last aforesaid the said canal boat

"605" was one of the six hindmost of said fourteen canal boats, and lay as the outside boat towards the New Jersey shore.

Thirdly. That at the time and place last aforesaid, while the said Princeton, with the said canal boats, including said "605," was duly and carefully proceeding on her said voyage, the said steamship Pennsylvania, whereof Lewis was master, on her way from New York to Liverpool and Queenstown, came down the said Hudson river, in a southeasterly direction from the New Jersey side, diagonally towards the New York side, with a great head of steam on, and then and there with great force and violence ran into and upon the said canal boats, and struck first the libellants' canal boat No. "605," and crushed the same, and caused the same to sink at once, with her tackle and furniture and every thing on board.

Fourthly. That the said steamship Pennsylvania, before and at the time of said collision, was coming rapidly down the said Hudson river with a great head of steam on; that from the improper and unskilful management of the persons navigating said steamship she was not so steered as to avoid the said collision, nor were her engines reversed in time to avoid said collision, which might easily have been done, and that the said steamship had not before, nor at the time of the said collision, a proper lookout and watch to guard against the danger of a collision in a crowded port; and that
171 the said collision was occasioned wholly by the neligence, want of skill, and improper conduct of the persons navigating the said steamship Pennsylvania, and not by or through any fault, negligence, or improper conduct of the persons on the said steam tug Princeton, and the said canal boat No. "605," and the said other canal boats.

Fifthly. That the said boat "605" sank forthwith in consequence of said collision, and is a total loss, and that said Wilson W. Gray was then and there drowned; and that the said The Lehigh Coal and Navigation Company, in consequence of said collision, have sustained damages by the loss of their part of the said boat and her tackle and furniture, and loss of time and expenses, to the amount of six hundred dollars; and that the said Rebecca Gray, to whom letters of administration on the estate of said Wilson W. Gray, were duly granted by the surrogate of the city and county of New York, on the 29th day of October, 1867, as such administratrix, in consequence of said collision, has sustained damages by the loss of the said Wilson W. Gray's part of the said boat, her tackle and furniture, his clothing and personal property on board, freight, and loss of time and expenses, to the amount of nine hundred and thirty-eight dollars and fifty cents, all of which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said steamship Pennsylvania, and not by or through any fault, negligence, or improper conduct on the part of the persons on board the Princeton, and the said canal boats.

Sixthly. That since the said canal boat "605" was so run foul of and sunk as aforesaid, the libellants have applied to F. W. J. Hurst, agent of The National Steam Navigation Company, owners of said

steamship, the said owners being, as the libellants are informed and verily believe, a British corporation, and requested him to
172 settle with the libellants for said damages; but that the said agent denies that there is any liability on the part of the said steamship for the said damages, or any part thereof.

Seventhly. That the said steamship Pennsylvania now is, or soon will be, lying in the port of New York and within the jurisdiction of this court.

Eighthly. That all and singular the premises are, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship Pennsylvania, her tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and equity they may be entitled to receive.

MAX GOEPP,
Proctor for Libellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Max Goepp, proctor for the libellants, being duly sworn, says that the libellants are absent from this district and reside in the State of Pennsylvania, and that this deponent is authorized to act for them therein, and that the foregoing libel is true, according to deponent's information and belief.

MAX GOEPP.

Sworn to before me, November 20, 1867.

JOHN A. OSBORN,
U. S. Commissioner.

173 *The Claim.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP PENNSYLVANIA, her Tackle, etc.,
asm.
THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, Administratrix, etc.

And now the National Steamship Company, intervening as claimants for the interest of themselves in the said steamship, etc., appears before the honorable court and makes claim to the said steam-

ship, etc., as the same are attached by the marshal, under process of this court, at the instance of The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, etc.; and the said National Steamship Company aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above name are the true and *bona fide* owners of the said
174 steamship, and that no other person is the owner thereof, and the said company is the true and lawful bailee thereof, as such owners. Wherefore they pray to defend accordingly.

THE NATIONAL STEAMSHIP COMPANY,
By F. W. J. HURST, *Manager.*

JOHN CHETWOOD,
Proctor for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, deposes and says: That he resides in the city of New York; that he is the manager of the National Steamship Company above named, and that the owners of said steamship reside in Liverpool, England; and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steamship, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed this 29th day of November, A. D. 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

The Bond for Value. Filed the 29th day of November, 1867.

District Court of the U. S. of America for the Southern District of New York.

Know all men by these presents, that we, The National Steamship Company and Peter H. Walsh, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of three thousand and seventy-
175 seven dollars, to be paid to the said Robert Murry, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, libellants, against the steamship Pennsylvania, &c., for the sum of fifteen hundred and thirty-eight dollars

and fifty cents, on which process of attachment has issued, and the said steamship, &c., is in custody of the marshal under the said attachment, and F. W J. Hurst, manager of said company, has applied for a discharge of said steamship, &c., from the custody of the marshal, and has filed a claim claiming the said steamship, &c., as owner, and has filed a stipulation for the claimant's cost, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such that if the above bounden The National Steamship Company and Peter H. Walsh shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP CO., [L. S.]
By F. W. J. HURST, *Manager.*
PETER H. WALSH. [L. S.]

Sealed and delivered and taken and acknowledged, this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

176 *The Answer.*

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of The National Steamship Company to the libel of The Lehigh Coal and Navigation Company and of Rebecca Gray, administratrix of Wilson W. Gray, deceased, against the Steamer Pennsylvania, her tackle, &c., respectfully shows:

First. That the claimants are and were the true and only owners of the said steamer Pennsylvania at the several times stated in the libel, and on proper stipulation the said vessel has been delivered to them.

Second. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Third. That the claimants have no knowledge of the matters stated in the second, third and fourth articles of the libel; but from information which they believe to be true, the claimants deny the same, and allege the facts to be, that the said steamer Pennsylvania started on her usual voyage on her usual course down the river, and when proceeding to sea the said steam tug was made a little on the port bow of the steamer; that the steamer immediately ported her helm, as she was bound to do, and the steamer sheered to the westward, and no collision would have happened, but the tug stopped and the tide swept the barges across the course of the steamer, upon the discovery of which the steamer was stopped and backed, and further sherred to the west; but in consequence of the barges being without persons to steer them, they swept with the tide against the steamer, and whatever injury occurred was in consequence
177 thereof, and without any fault on the part of the claimants, their agent or servants, and that the collision occurred wholly

by the fault of the barges, and without any fault on the part of the steamer, the usual and proper look-outs having been stationed and being in the performance of their duties before and at the time of the collision, and all proper and ordinary precautions being taken to avoid any collision.

Sixth. That the claimants, further answering, on information and belief, say that that they deny the statements in the fifth and sixth articles of the libel.

Seventh. That all and singular the premises in this answer alleged are true.

Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellants, and to condemn them in costs, and otherwise right and justice to administer in the premises.

F. W. J. HURST,
Agent N. S. S. Co.

JOHN CHETWOOD, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, says: That he is the managing agent in the United States of the claimants; that he has read the foregoing claim and answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this 31st day of December, 1867.
[SEAL.] WALTER E. SMITH,
Notary Public N. Y. City.

178 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 18th day of March, in the year of our Lord one thousand eight huudred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge

NATHAN SOLLIDAY *et al.*
vs.
THE STEAMSHIP PENNSYLVANIA. } 21–510.

REBECCA GRAY, Administratrix, &c., *et al.*
vs.
THE SAME. } 21–511.

WILLIAM BASSETT *et al.*
vs.
THE SAME. } 21–512.

179 EDWARD L. MORRIS *et al.* vs. THE SAME. } 21–528.

SETH CALDWELL *et al.* vs. THE SAME. } 21–547.

The three first above-entitled causes being called in their order on the day calendar, the two last above-entitled causes being reserved generally:

Ordered by the court that the five actions be heard together, one decree to be entered in said five actions.

180 *Decree.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York on Monday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, Administratrix, etc., vs. THE STEAMSHIP PENNSYLVANIA, her Tackle, etc. } 21–511

This case having been heard on the pleadings and proof, and argued and submitted on brief and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

And it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of the court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

181 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Saturday the eighteenth day of January, in the year of our Lord one thousand eight [hundred] and seventy-*two*.

Present: The Honorable Lewis B. Woodruff, circuit judge.

STEAMSHIP PENNSYLVANIA, &c., *ads.* LEHIGH COAL & N. CO. and REBECCA GRAY.

This cause having been heard on the pleadings and proofs in the

above cause on the appeal of the libellants herein, after hearing Simon Sterne, Esq., and ———, for libellants, and John Chetwood, Esq., and Charles Donohue, for appellees, claimants, it is now ordered, adjudged, and decreed that the libel herein be dismissed with costs to be taxed; that the claimants recover the sum of nine four $\frac{19}{100}$ dollars, the taxed costs in the district court, with interest thereon from the 30th April, 1869, the date of the taxation of the costs, together with costs in this court taxed, at the sum of sixty four dollars twenty-three cents, making in all the sum of one hundred and eighty-three $\frac{54}{100}$ dollars, and that the claimants have execution therefor.

L. B. WOODRUFF, *Circuit J.*

Endorsed: Filed January 18, 1873.

182 The printed apostles in the five suits in the U. S. district court, southern district of New York, against the steamship Pennsylvania (all resulting from the same collision) brought by—

The Lehigh Coal and Navigation Company and Nathan Solliday, libellants.

The Lehigh Coal and Navigation Company and William Bassett, libellants.

The Lehigh Coal and Navigation Company and Rebecca Gray, libellants.

(Wherein Max Goepp was proctor for libellants).

Edward L. Morris and Benjamin F. Ely, libellants.

(Wherein F. C. Bowman was libellants' proctor).

Seth Caldwell, Jr., and others, libellants.

(Wherein Post & Bissell were libellants' proctor).

The decrees of the U. S. circuit court, southern district of New York, on the appeal in the said five suits.

183 UNITED STATES OF AMERICA, *Southern District of New York*, } *ss*:

1. THE LEHIGH COAL AND NAVIGATION COMPANY and NATHAN SOLLIDAY, Lebellants and Appellants, *vs.* THE STEAMSHIP "PENNSYLVANIA," HER TACKLE, &c., THE NATIONAL STEAMSHIP COMPANY, Claimants and Appellees. } 21–510.

2. THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, Administratrix, Libellants and Appellees, *vs.* THE SAME. } 21–511.

3. THE LEHIGH COAL AND NAVIGATION COMPANY and WM. BASSETT, Libellants and Appellants, *vs.* THE SAME. } 21–512.

4. EDWARD L. MORRIS and BENJAMIN F. ELY, Libellants and Appellants,
vs.
THE SAME. } 21–528.

5. SETH CALDWELL, JR., *et al.*, Libellants and Appellants,
vs.
THE SAME. } 21–547.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, this first day of September in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the said United States the ninety-fourth.

GEORGE F. BETTS, *Clerk.*

MAX GOEPP,
Proctor for Libellants and Appellants in three first above-entitled causes of action.
F. C. BOWMAN,
Proctor for Libellants and Appellants in fourth above-entitled cause of action.
POST & BISSELL,
Proctor for Libellants and Appellants in fifth above-entitled cause of action.
MAX GOEPP, *Advocate.*
JOHN CHETWOOD,
Proctor for Claimants and Appellees.
CHARLES DONOHUE, *Advocate*

185 To the Honorable Samuel Blatchford, judge of the district court of the United States within and for the southern district of New York:

The libel of Nathan Solliday, of the State of Pennsylvania, and of The Lehigh Coal and Navigation Company, a corporation duly incorporated by and under the laws of the said State, against the steamship "Pennsylvania," her tackle, apparel, and other furniture, and all persons lawfully intervening for their interests in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter mentioned, the said Lehigh Coal and Navigation Company and the said Nathan Solliday were joint owners of a certain canal boat, number "739," of the Lehigh Coal and Navigation Company's Canal-boat line, with tackle, appare', and other furniture, the said company being the owners of about five-ninths thereof, and the said Nathan Solliday being the owner of about four-ninths thereof, and also the master thereof, which said canal boat your libellants used

and employed in transporting freight, to wit, coal from Mauch Chunk, in the State of Pennsylvania, to the city of New York, between which ports she was regularly run during the summer boating season for the purposes aforesaid.

Secondly. That on Wednesday, the twenty-fourth day of Octobe 1867, the said canal boat "739," with her tackle, apparel, and oth furniture, along with thirteen other canal boats, was proper. and safely attached to the steam tug boat "Princeton," whic said steam tug boat "Princeton," with the said fourteen canal boats in tow, was then proceeding on her voyage from New Brunswick to the city of New York, as she had a perfect right to do. That at about five o'clock of the morning of said day the said steam tug boat, with the said canal boats in tow, had proceeded
186 on her said voyage as far as about the middle of the Hudson river, nearly opposite pier No. 2, in the city of New York, and was proceeding on her said voyage up the said Hudson river, as she had a perfect right to do; that at the time and place aforesaid the said canal boat "739" was one of the six hindmost of said fourteen canal boats, and lay as the second boat from the New Jersey side, having immediately to the left of her the canal boat "605," which was the outside boat on the New Jersey side.

Thirdly. That at the time and place last aforesaid, while the said "Princton," with the said canal boats, including said "739", was duly and carefully proceeding on her said voyage, the said steamship "Pennsylvania," whereof Lewis was master, on her way from New York to Liverpool and Queenstown, came down the said Hudson river in a southeasterly direction from the New Jersey side, diagonally toward the New York side, with a great head of steam on, and then and there, with great force and violence, ran into and upon the said canal boats, and struck first the said canal boat "605," and then and there, with like great force and violence, struck the libellants' said canal boat "739," and crushed the same, so as to render the same utterly useless and worthless, and did great damage and injury to the same.

Fourthly. That the said steamship "Pennsylvania," before and at the time of the said collision, was coming rapidly down the said Hudson river with a great head of steam on, and that from the improper and unskilful management of the persons navigating said steamship she was not so steered as to avoid the said collision, nor were her engines reversed in time to avoid said collision, which might easily have been done; and that she had not before, nor at the time of the said collision, a proper look-out and watch to guard against the danger of a collision in a crowded port; and that the said collision was occasioned wholly by the negligence, want
187 of skill, and improper conduct of the persons navigating said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct of the persons on board the said steam tug "Princeton" and the said canal boat "739," and the said other canal boats.

Fifthly. That the said boat "739" has been greatly crushed and broken in consequence of said collision, and has been rendered, and

now is, totally useless and worthless, and that the libellants, in consequence thereof, have sustained damage by the injuries to the said boat, and her tackle and furniture, and loss of freight, and loss of time, and expenses of her said master and crew to the amount of thirteen hundred and fifty dollars; which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct on the part of the persons on board of the "Princeton" and the said canal boats.

Sixthly. That since the said canal boat "739" was so run foul of and sunk as aforesaid, the libellants have applied to F. W. J. Hurst, agent of the National Steam Navigation Company, owners of said steamship, the said owners being, as the libellants are informed and believe, a British corporation, and requested him to settle with the libellants for said damages; but the said agent denies that there is any liability on the part of the said steamship for the said damages or any part thereof.

Seventhly. That the said steamship "Pennsylvania" now is or soon will be lying in the port of New York, and within the jurisdiction of this court.

Eighthly. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases
188 of admiralty and maritime jurisdiction, may issue against the said steamship "Pennsylvania," her tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matter aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condmned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

MAX GOEPP,
Proctor for Libellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Max Goepp, proctor for the libellants, being duly sworn, says: That the libellants are absent from this district, and reside in the State of Pennsylvania, and that this deponent is authorized to act for them therein, and that the foregoing libel is true, according to deponent's information and belief.

MAX GOEPP.

Sworn before me, March 2d, 1868.

W. G. LATHROP, JR.,
Notary Public, N. Y. City and Co.

(Endorsed:) 21,510. United States district court for the southern district of New York. Nathan Solliday *et al. vs.* the steamship

"Pennsylvania," &c. Amended libel. Max Goepp, proctor for libellants. Filed March 10, 1868. Sir: Please take notice that this court will be moved on Tuesday, the 10th day of May, 1868, at 11 a. m. for an order that the within amended libel may be substituted by way of amendment for the libel now on file in this suit. Dated February 18, 1868. Max Goepp, proctor for libellants. To
189 John Chetwood, Esq., proctor for claimants. Due service of a copy of within amended libel and notice is hereby admitted. March 4, 1868. John Chetwood, proctor for respondents.

To the honorable Samuel Blatchford, judge of the district court of the United States within and for the southern district of New York:

The libel of The Lehigh Coal and Navigation Company, a company duly incorporated under the laws of the State of Pennsylvania, and of Rebecca Gray, administratrix, &c., of Wilson W. Gray, deceased, of Bucks county, in the State of Pennsylvania, against the steamship "Pennsylvania," her tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same in a cause of collision, civil and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter mentioned the said The Lehigh Coal and Navigation Company and the said Wilson W. Gray were joint owners of a certain canal boat, called No. "605," of the said company's line of canal boats, the said company being the owners of a fraction more than one-half thereof, and the said Wilson W. Gray being the owner of a fraction less than a half thereof, and also the master thereof; which said canal boat the said Wilson W. Gray used and employed in transporting freight, to wit, coal from Mauch Chunk, in the State of Pennsylvania, to the city of New York, between which ports she was regularly run during the summer boating season for the purposes aforesaid.

Secondly That on Wednesday, the twenty-fourth day of October, 1867, the said canal boat "605," with her tackle, apparel, and other furniture, along with thirteen other canal boats, was properly
190 and safely attached to the steam tug boat "Princeton," which said steam tug boat "Princeton," with the said fourteen canal boats in tow, was proceeding on her voyage from New Brunswick to the city of New York, as she had a perfect right to do. That at about five o'clock of the morning of the said day the said steam tug boat, with the said canal boats in tow, had proceeded on her said voyage as far as about the middle of the Hudson river, nearly opposite Pier No. 2, in the city of New York, and was proceeding on her said voyage up the said Hudson river, as she had a perfect right to do. That at the time and place last aforesaid the said canal boat "605" was one of the six hindmost of said fourteen canal boats, and lay as the outside boat towards the New Jersey shore.

Thirdly. That at the time and place last aforesaid, while the said "Princeton," with the said canal boats, including said "605," was duly and carefully proceeding on her said voyage, the said steamship "Pennsylvania," whereof Lewis was master, on her way from

New York to Liverpool and Queenstown, came down the said Hudson river in a southeasterly direction from the New Jersey side, diagonally towards the New York side, with a great head of steam on, and then and there, with great force and violence, ran into and upon the said canal boats, and struck first the libellants' said canal boat No. "605," and crushed the same, and caused the same to sink at once, with her tackle and furniture and everything on board.

Fourthly. That the said steamship "Pennsylvania," before and at the time of the said collision, was coming rapidly down the said Hudson river with a great head of steam on; that from the improper and unskilful management of the persons navigating said steamship she was not so steered as to avoid the said collision, nor were her engines reversed in time to avoid said collision, which might
191 easily have been done, and that the said steamship had not before, nor at the time of the said collision, a proper look-out and watch to guard against the danger of a collision in a crowded port; and that the said collision was occasioned wholly by the negligence, want of skill, and improper conduct of the persons navigating the said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct of the persons on the said steam tug "Princeton," and the said canal boat No. "605," and the said other canal boats.

Fifthly. That the said boat "605" sank forthwith in consequence of said collision, and is a total loss, and that the said Wilson W. Gray was then and there drowned; and that the said The Lehigh Coal and Navigation Company, in consequence of said collision, have sustained damages by the loss of their part of the said boat and her tackle and furniture, and loss of time and expenses, to the amount of six hundred dollars; and that the said Rebecca Gray, to whom letters of administration on the estate of the said Wilson W. Gray were duly granted by the surrogate of the city and county of New York, on the 29th day of October, 1867, as such administratrix, in consequence of said collision, has sustained damages by the loss of the said Wilson W. Gray's part of the said boat, her tackle and furniture, his clothing and personal property on board, freight and loss of time and expenses, to the amount of nine hundred and thirty-eight dollars and fifty cents, all of which said damages were occasioned by the negligence, want of skill and improper conduct of the persons navigating the said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct on the part of the persons on board the "Princeton" and the said canal boats.

Sixthly. That since the said canal boat "605" was so run foul of and sunk as aforesaid, the libellants have applied to F. W. J. Hurst, agent of the National Steam Navigation Company, owners of
192 said steamship, the said owners being, as the libellants are informed and verily believe, a British corporation, and requested him to settle with the libellants for said damages; but the said agent denies that there is any liability on the part of the said steamship for the said damages, or any part thereof.

Seventhly. That the said steamship "Pennsylvania" now is, or

soon will be, lying in the port of New York, and within the jurisdiction of this court.

Eighthly. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Pennsylvania," her tackle, apparel, and other furniture; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and equity they may be entitled to receive.

MAX GOEPP,
Proctor for Libellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Max Goepp, proctor for the libellants, being duly sworn, says: That the libellants are absent from this district, and reside in the State of Pennsylvania, and that this deponent is authorized to act for them therein; and that the foregoing libel is true according to deponent's information and belief.

MAX GOEPP.

Sworn to before me, November 20, 1867.

JOHN A. OSBORN,
U. S. Commissioner.

193 (Endorsed:) 21,511. United States district court for the southern district of New York. The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, &c., *vs.* The Steamship "Pennsylvania," &c. Libel. ($53,850.) Max Goepp, proctor for libellants. Filed Nov. 20, 1867.

To the Honorable Samuel Blatchford, judge of the district court of the United States within and for the southern district of New York:

The libel of William Bassett, of the State of Pennsylvania, and of The Lehigh Coal and Navigation Company, a corporation duly incorporated by and under the laws of the said State of Pennsylvania, against the steamship "Pennsylvania," her tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same in a cause of collision, civil and maritime, alleges as follows:

First. That before and at the time of the collision hereinafter mentioned the said The Lehigh Coal and Navigation Company and the said William Bassett were joint owners of a certain canal boat, called number "781" of the said company's line of canal boats, the said company being the owners of five hundred and sixty-three nine hun-

dred and fiftieths thereof, and the said Bassett being the owner of three hundred and eighty-seven nine hundred and fiftieth parts thereof, and also the master thereof, which said canal boat your libellants used and employed in transporting freight, to wit, coal from Mauch Chunk, in the State of Pennsylvania, to the city of New York, between which ports she was regularly run during the summer boating season for the purposes aforesaid.

Secondly. That on Wednesday, the twenty-fourth day of
194 October, 1867, the said canal boat "781," with her tackle, apparel, and other furniture, along with thirteen other canal boats, was properly and safely attached to the steam tug boat "Princeton," which said steam tug boat "Princeton," with the said fourteen canal boats in tow, was then proceeding on her voyage from New Brunswick to the city of New York, as she had a perfect right to do. That at about five o'clock in the morning of said day, the said steam tug boat, with the said canal boats in tow, had proceeded on her said voyage as far as about the middle of the Hudson river, nearly opposite pier No. 2, in the city of New York, and was proceeding on her said voyage up the said Hudson river, as she had a perfect right to do. That at the time and place aforesaid the said canal boat "781" was one of the six hindmost of said fourteen canal boats, and lay as the third boat from the New Jersey side, having immediately to the left of her the canal boat "739," and further on the left the canal boat "605," which was the outside boat on the New Jersey side.

Thirdly. That at the time and place last aforesaid, while the said "Princeton," with the said canal boats, including said "781," was duly and carefully proceeding on her said voyage, the said steamship "Pennsylvania," whereof Lewis was master, on her way from New York to Liverpool and Queenstown, came down the said Hudson river in a southeasterly direction from the New Jersey side, diagonally toward the New York side, with a great head of steam on, and then and there, with great force and violence, ran into and upon the said canal boats, and struck first the said boat "605," and then said canal boat "739," and then and there, by reason of the said collision and by the force thereof, caused the said canal boat "739" to strike with great force and violence against your libellant's said canal boat "781," and did thereby crush in the said canal boat "781," and caused the same to sink at once, with her tackle and furniture and everything on board.

195 Fourthly. That the said steamship "Pennsylvania," before and at the time of the said collision, was coming rapidly down the said Hudson river, with a great head of steam on. That from the improper and unskilful management of the persons navigating said steamship, she was not so steered as to avoid the said collision, nor were her engines reversed in time to avoid said collision, which might easily have been done; and that the said steamship had not, before nor at the time of the said collision, a proper look-out and watch to guard against the dangers of a collision in a crowded port, and that the said collision was occasioned wholly by the negligence, want of skill, and improper conduct of the persons navigating the

said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct of the persons on board the said steam tug "Princeton," and the said canal boat "781," and the said other canal boats.

Fifthly. That the said boat "781" sank forthwith in consequence of said collision, and is a total loss; and that the libellants in consequence thereof have sustained damages by the loss of the said boat, and her tackle and furniture, and of the said Bassett's clothing and personal property, and the freight due him for said cargo of coal, and for loss of time and expenses of himself and crew (not including the said cargo of coal), to the amount of seventeen hundred dollars; which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct on the part of the persons on board the "Princeton" and the said canal boats.

Sixthly. That since the said canal boat "781" was so run foul of and sunk, as aforesaid, the libellants have applied to F. W. J. Hurst, agent of the National Steam Navigation company, owners of said steamship, the said owners being, as the libellants are informed and believe, a British corporation, and requested him to settle
196 with the libellants for said damages; but the said agent denies that there is any liabity on the part of the said steamship for the said damages, or any part thereof.

Seventhly. That the said steamship "Pennsylvania" now is, or soon will be, lying in the port of New York, and within the jurisdiction of this court.

Eighthly. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Pennsylvania," her tackle, apparal, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

MAX GOEPP,
Proctor for Libellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Max Goepp, of said district, being duly sworn, says that he is the proctor for the libellants and that the libellants are absent from this district, and reside in the State of Pennsylvania, and that this deponent is authorized to act for them therein, and that the foregoing libel is true according to deponent's information and belief.

MAX GOEPP.

Sworn to before me, March 2d, 1868.

W. G. LATHROP, JR.,
Notary Public N. Y. City and County.

197 (Endorsed:) 21,512. United States district court for the southern district of New York. William Bassett *vs.* The Steamship "Pennsylvania," &c. Amended libel. Max Goepp, proctor for libellants. Filed March 10, 1868. Sir: Please take notice that this court will be moved on Tuesday, the 10th day of March, 1868, at 11 a. m., for an order that the within amended libel may be substituted by way of amendment for the libel now on file in this suit. Dated February 18, 1868. Max Goepp, proctor for libellants. To John Chetwood, proctor for claimants. Due service of a copy is hereby admitted, March 4, '68. John Chetwood, proctor for respondents.

To the Honorable Samuel Blatchford, judge of the district court of the United States within and for the southern district of New York:

The libel of Edward L. Morris and Benjamin F. Ely against the steamship "Pennsylvania," her tackle, apparal, and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants before, and at the time of the collision hereinafter mentioned, were copartners in business in the city of New York, and, as such copartners, were the owners of a certain cargo of Lehigh coal of the quantity of $96\frac{14}{20}$ tons at the time of the said collision, on board of the canal boat known as No. "781" of the Lehigh Coal and Navigation Company's canal boat line, whereof Bassett was master, which said canal boat was used and employed in transporting coal from Mauch Chunk, in the State of Pennsylvania, to the city of New York, and was at the time of said
198 collision engaged in transporting the said $96\frac{14}{20}$ tons of coal for freight to the said port of New York.

Secondly. The libellants further allege, upon information and belief, that on Wednesday, the 24th of October, 1867, the said canal boat "781," with her tackle, apparel, and furniture, along with thirteen other canal boats, was properly and safely attached to the steam tug "Princeton," which said steam tug, with the said fourteen canal boats in tow, was then proceeding on her voyage from New Brunswick, in the State of New Jersey, to the city of New York, as she had a perfect right to do. That at about five and a half o'clock in the morning of said day, the said steam tug, with the said canal boats in tow, had proceeded on her voyage as far as about the middle of the Hudson river, nearly opposite pier No. 2, in the city of New York, and was proceeding on her said voyage up the said Hudson river, as she had a perfect right to do; that at the time and place aforesaid, the said canal boat "781" was one of the six hindermost of the said fourteen canal boats, and lay as the third boat from the said Jersey side, having immediately to the left of her the canal boat "739," and further on the left, the canal boat "605," which was the outside boat on the New Jersey side.

Thirdly. The libellants further allege, upon information and belief, that at the time and place last aforesaid, while the said "Princeton," with the said canal boats, including said "781," was duly and

carefully proceeding on her said voyage, the said steamship "Pennsylvania," whereof Lewis was master, on her way from New York to Liverpool and Queenstown, came down the said Hudson river in a southeasterly direction from the New Jersey side, diagonally toward the New York side, with a great head of steam on, and then and there, with great force and violence, ran into and upon the said canal boats, and struck first the said boat "605," and then said canal boat
199 "739," and then and there, by reason of said collision, and by the force thereof, caused the said canal boat "739" to trike with great force and violence against the said canal boat "781," on which your libellants' coal was being transported, and did thereby crush in the said canal boat "781," and caused the same to sink at once, with the said $96\frac{14}{20}$ tons of coal, the property of the libellants.

Fourthly. The libellants further allege, upon information and belief, that the said steamship "Pennsylvania," before and at the time of the said collision, was coming rapidly down the Hudson river with a great head of steam on. That from the improper and unskillful management of the persons navigating said steamship, she was not so steered as to avoid the said collision, nor were her engines reversed in time to avoid said collision, which might easily have been done, and that the said steamship had not before, nor at the time of the said collision, a proper look out and watch to guard against the danger of a collision in a crowded port, and that the said collision was occasioned wholly by the negligence, want of skill, and improper conduct of the persons navigating the said steamship "Pennsylvania," and not by or through any fault, negligence, or improper conduct of the persons on board the said steam tug "Princeton," and the canal boat "781," and the said other canal boats.

Fifthly. That the said canal boat "781" sank forthwith in consequence of said collision, carrying down with her the said libellants' $96\frac{14}{20}$ tons of coal; and that the same was a total loss, and that the libellants, in consequence thereof, have sustained damages by the loss of their said cargo of coal to the amount of four hundred and ninety-eight dollars.

Sixthly. That since the said canal boat "781" was so run foul of and sunk, with her said cargo, the libellants have applied to F. W. J. Hurst, agent of the National Steam Navigation Company,
200 owners of the said steamship, (the said owners being, as the libellants are informed and believe, a British corporation,) and requested him to settle with the said libellants for said damages; but the said Hurst denies that there is any liability on the part of the said steamship for the said damages, or any part thereof.

Seventhly. That the said steamship "Pennsylvania" now is lying in the port of New York, and within the jurisdiction of this court.

Eighthly. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship

"Pennsylvania," her tackle, apparel, and other furniture; and that all persons having any interest therein may be cited to appear, and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned, and sold to pay the same; and that the libellants have such further and other relief as in law and justice they may be entitled to receive.

FRANCIS C. BOWMAN,
Proctor for Libellants.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Edward L. Morris, being duly sworn, says: That he is one of the libellants, and that the foregoing libel is true according to deponent's information and belief.

EDW'D L. MORRIS.

Sworn to before me, this 29th day of Nov., 1867.

JOHN A. OSBORN,
U. S. Commissioner.

201 (Endorsed:) 21–528. U. S. district court, southern dist. of New York. Edward L. Morris and Benjamin F. Ely *vs.* The Steamship "Pennsylvania," her tackle, etc. Libel. F. C. Bowman, proctor for libellants. Filed Nov. 29, 1867.

In Admiralty.

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

Seth Caldwell, Jr., of the city and county of Philadelphia and State of Pennsylvania, Nathaniel P. Gordon, of said city, county, and State, Frank A. Hall, of ———, in Massachusetts, and Samuel B. Young, of the city, county, and State of New York, copartners in business, under the name and firm of Caldwell, Gordon & Company, and doing business at the city of New York, and as such copartners, owners of the cargo of coal hereinafter mentioned, exhibit this their libel against the steamer "Pennsylvania," now lying in the port of New York, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime; and thereupon the said Seth Caldwell, Jr., Nathaniel P. Gordon, Frank A. Hall, and Samuel B. Young do allege and articulately propound as follows, to wit:

First. That the said cargo of coal consisted of ninety-two tons, and was, at the time when the cause of action hereinafter mentioned arose, on board the canal boat number "605," register of Mauch Chunk, Pennsylvania, said boat being of about 100 tons register.

202 Second. That the said coal was duly laden on board said boat at said Mauch Chunk, on or about the 14th day of October,

in the year 1867, and that said boat "605," being in good condition, staunch, well provided and manned, sailed from Mauch Chunk, on the day last above mentioned for the port of New York, with said cargo on board, and at New Brunswick, in the State of New Jersey, by the steam tug "Princeton," on or about the 23rd day of October in said year, was taken in tow with thirteen other boats.

Third. That during said voyage, and while said "605" with the cargo aforesaid, was being so towed by said tug, and going up the Hudson river, the said boat "605" was one of the last of said fourteen boats, and in a line of three boats, which said three were attached to two other boats next preceding, and those two to two others at the side of and next to said tug, said seven boats forming one side of the tow, and being similarly placed to the seven on the other side of the tug and tow; and said boat "605" was also the outer one of said line of three, and nearest the shore of New Jersey, as the tow was going northward up the Hudson aforesaid.

Fourth. That proceeding on the voyage as above, and in the position last set forth, at or about six o'clock in the morning of the 24th day of October, 1867, being then nearly opposite pier number 2, North river, according to the numbering of piers on the New York side or shore of said river, and being towed in a course almost directly up said river, the said boat "605," containing this cargo, was run into by a steamer approaching the said tow in a southeasterly direction. That the said tug gave the proper signal for the said steamer to pass to the left and on the starboard side of said tow, and kept on her course, turning to the left, as she was bound to do.

That immediately after being so struck by said steamer,
203 the said boat, number "605," was, by the force of the blow, cut in twain and parted, and, in spite of the most strenuous efforts of those on board, sunk; the said cargo of coal was spilled out, sunk, and lost in the river, at about the point of collision, the captain of said boat "605" going to the bottom with his boat.

Fifth. That the said steamboat, by which the said damage had been done, proved to be the "Pennsylvania" aforesaid, under the command of one Lewis as master, and being of —— tons burthen, bound on a voyage from New York aforesaid to Liverpool and Queenstown. That at the time of said collision it was light, and objects could be discerned and plainly seen across and over said river, and if a good lookout had been kept, the said tow could have been discovered long prior to the collision as above.

Sixth. That if the said "Pennsylvania" had answered and obeyed said signal, and had passed the larboard side of said tow, as she was bound to do, she would have passed the said boat "605" in safety. That she was going at a rapid rate, and did not slow or reverse her engines to avoid the collision. That at the time when the danger of a collision was first observed, it was impossible for the said boat "605," or said tug, to get out of the way of said "Pennsylvania." That the said boat "605," and the said tug "Princeton," were well and properly handled, nor were there any means to which they or

either of them could with propriety have resorted to avoid said collision.

Seventh. That at the time of the aforementioned loss of the said cargo, these libellants were the true and lawful owners of the said cargo, and that said cargo was of the value of four hundred and thirty-seven dollars; and that by reason of the careless, negligent, unskillful, and improper management of the said steamer "Pennsylvania," and of the collision thereby occasioned of the said steamer with the said boat number "605," the libellants have sus-
204 tained damages to the amount of one thousand dollars, or thereabouts, for which they claim reparation in this suit.

Eighth. That the said steamboat "Pennsylvania" is now at the port of New York.

Ninth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamer "Pennsylvania," her engines, boilers, machinery, boats, tackle, apparel, and furniture; and that all persons having, or pretending to have, any interest therein may be cited to appear and answer all and singular the matters so as aforesaid propounded; and that this honorable court will be pleased to pronounce for the damages aforesaid, and to decree the said vessel to be sold to pay the same and cost; and for such other and different relief as to right and justice shall appertain.

SAM'L B. YOUNG.

Affirmed to before me, this 7th day of December, 1867.

GEO. F. BETTS, *U. S. Comm'r.*

POST & BISSELL, *Proctors.*
JULIUS B. BISSELL,
Advocate, 62 William Street, New York City.

(Endorsed:) 21–547. District court U. S. for the southern district of New York. Seth Caldwell, Jr., *et al. vs.* The "Pennsylvania," etc. Libel. Post and Bissell, proctors, 62 William st., New York. Filed Dec. 7, 1867.

205 *Stipulation for Libellants' Costs, entered into Pursuant to the Rules and Practice of this Court. Filed the 20th day of November,* 1867.

293.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Nathan Solliday against the steamship "Pennsylvania," her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned and sold to pay the demands of said libellant, and the said libellant and Edward L. Morris and Nathan Barney, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy

on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

NATHAN SOLLIDAY,
By MAX GOEPP, *Agent.*
EDWARD L. MORRIS.
N. BARNEY.

Taken and acknowledged, this 20th day of Nov., 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

206 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward L. Morris and Nathan Barney, parties to the above stipulation, being duly sworn, each doth dispose and say: That he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDWARD L. MORRIS.
N. BARNEY.

Sworn to, this 20th day of Nov., 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 20th day of November, 1867.

——— ———, *Clerk.*

Stipulation for Libellants' Costs, entered into Pursuant to the Rules and and Practice of this Court Filed the 20th day of November, 1867.

294.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, &c., against the steamship "Pennsylvania," her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned and sold to pay the demands of libellants, and the said libellants and Edward L. Morris and Nathan Barney, sureties, parties hereto, hereby consenting and agreeing that in case of default

or contumacy on the part of the libellant or sureties, execu-
207 tion may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

THE LEHIGH COAL AND NAV. CO.
AND REBECCA GRAY, *Adm'x*,
By MAX GOEPP, *Agent.*
EDWARD L. MORRIS.
N. BARNEY.

Taken and acknowledged, this 20tn day of Nov., 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward L. Morris and Nathan Barney, parties to the above stipulation, being duly sworn, each doth dispose and say: That he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDWARD L. MORRIS.
N. BARNEY.

Sworn to, this 20th day of Nov., 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 20th day of November, 1867.

—— ——, *Clerk.*

208 *Stipulation for Libellants' Costs, Entered into Pursuant to the Rules and Practice of this Court. Filed the 20th day of November,* 1867.

295.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by William Bassett against the steamship "Pennsylvania," her engines, tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned, and sold to pay the demands of libellants; and the said libellant and Edward L. Morris, and Nathan Barney, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy

on the part of the libellant or sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

WILLIAM BASSET.
By MAX GOEPP, *Agent.*
EDWARD L. MORRIS.
N. BARNEY.

Taken and acknowledged, this 20th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

209 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward L. Morris and Nathan Barney, parties to the above stipulation, being duly sworn, each doth depose and say, that he resides in the city of Brooklyn, and that he is worth the sum of five hundollars over and above all his just debts and liabilities.

EDWARD L. MORRIS.
N. BARNEY.

Sworn to this 20th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 20th day of November, 1867.

——— ———, *Clerk.*

Stipulation for Libellants' Costs, Entered into Pursuant to the Rules and Practice of this Court. Filed the 29th day of November, 1867.

301.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Edward L. Morris and Benjamin F. Ely against the steamship "Pennsylvania," her tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned to pay the demands of said libellants, and the said libellants and Nathan Barney, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against

their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

210 Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

EDWARD L. MORRIS.
N. BARNEY.

Taken and acknowledged, this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nathan Barney, party to the above stipulation, being duly sworn, doth depose and say: That he resides in the southern district of New York, and that he is worth the sum of —— hundred dollars, over and above all his just debts and liabilities.

——— ———.

Sworn to this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 29th day of November, 1867.

——— ———, *Clerk.*

211 *Stipulation for Libellant's Costs, Entered into Pursuant to the Rules and Practice of this Court. Filed the seventh day of December,* 1867.

309.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Seth Caldwell, Jr., and others, against the steamship "Pennsylvania," her engine, tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamer, her tackle, etc., may be condemned and sold to pay the demands of libellants; and the said libellants, and Herbert D. Ward and Samuul B. Van Dusen, sureties, parties hereto, hereby consenting and agreeing that in the case of default or contumacy on the part of the libellant or sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, con-

ditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

SAMUEL B. YOUNG.
H. D. WARD.
SAMUEL B. VAN DUSEN.

Taken and acknowledged, this seventh day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

212 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Herbert D. Ward and Samuel B. Van Dusen, parties to the above stipulation, being duly sworn, each doth depose and say: That he resides in the city of New York, and that he is worth the sum of — hundred dollars over and above all his just debts and liabilities.

H. D. WARD.
SAMUEL B. VAN DUSEN.

Sworn to this seventh day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the seventh day of December, 1867.

——— ———, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, Greeting:

[L. S.] Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Seth Caldwell, Jr., and others, against the steamer "Pennsylvania," her engines, tackle, &c., collision $1,000, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer, or vessel, her tackle, &c., may be cited in general and special to answer the premises, and, all proceedings being had, that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

213 You are, therefore, hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the southern dis-

trict of New York, on the 24th day of December, inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our Independence the ninety-second.

GEORGE F. BETTS, *Clerk.*

POST & BISSELL,
Proctors for Libellants.

In obedience to the within monition, I attached the steamer "Pennsylvania" therein described, on the 7th day of December, '67, and have given due notice to all persons claiming the same, that this court will, on the 24th day of December, inst. (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated December 24, 1867.

214 (Endorsed:) Vol. 21, page 547. Southern district of New York. United States district court. Seth Caldwell, Jr., and others, *vs.* The Steamer "Pennsylvania," her engines, tackle, &c. Monition ret'ble December 24, 1867. Post & Bissell, proctors for libellants, 62 William St. Filed December 24, 1867. I hereby depute F. Brannigan to execute the within process. Dated Dec. 1867. R. Murray, U. S. Marshal.

United States District Court, Southern District of New York.

NATHAN SOLLIDAY,
vs
THE STEAMSHIP "PENNSYLVANIA," Her Tackle, &c. } 21–510.

THE LEHIGH COAL AND NAVIGATION CO., and REBECCA GRAY, Administratrix, &c.,
vs.
THE SAME. } 21–511.

WILLIAM BASSETT.
vs.
THE SAME. } 21–512.

215 EDW. L. MORRIS and BANJAMIN F. ELY
vs.
THE SAME. } 21–528.

It is hereby consented that service of process of attachment against

the above-named steamship, &c., be waived on the claimants filing claim and executing stipulations for cost, and a bond under the act of March 3d, 1847, in double the amount claimed in each of the above-entitled actions, the bond to be signed by F. W. J. Hurst, manager of the National Steamship Company, owners of the said steamship, and by Peter H. Walsh as surety, the surety to justify in the usual manner, the cost of the clerk and commissioner to be paid into court at the time of bonding, and the claimants to answer the several libels on file on or before the 17th day of December, 1867, and that an order on the consent be entered on the minutes of the court.

MAX GOEPP,
Proctor for Libellants, Solliday, Lehigh Coal Co., Gray, Adm'x, and Bassett.
F. C. BOWMAN,
Proctor for Morris & Ely, Libellants.

New York, November 29, 1867.

I hereby agree to appear for the claimants in the four within entitled actions, and to answer in each suit on or before the 17th December, 1867.

New York, November 29, 1867.

JOHN CHETWOOD, *Proctor for Claimants.*

216 (Endorsed:) 21–510, 511, 512, 528. U. S. district court, southern district N. Y. S. S. "Pennsylvania," &c., administrator, Nathan Solliday. Same *ads.* Lehigh Coal Co. *et al.* Same *ads.* Bassett. Same *ads.* Morris & Ely. Consent. Filed December 2d, 1867.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the second day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," her Engines, &c., *ads.* NATHAN SOLLIDAY. } 21–510.

THE SAME *ads.* THE LEHIGH COAL AND NAVAGATION COMPANY and REBECCA GRAY, Administratrix, &c. } 21–511.

217 THE SAME *ads.* WILLIAM BASSETT. } 21–512.

THE SAME *ads.* MORRIS and ELY. } 21–528.

On reading and filing consent to bond and waive service of pro-

cess of attachment herein signed by the proctors for libellants, and the terms being complied with, on motion of John Chetwood, proctor for claimants, it is ordered that the service of process of attachment against the above-named steamship, &c., be, and the same is hereby, waived; the bond executed to the marshal under the act of Congress approved March 3, 1847, to represent said steamship, &c., in the above-entitled actions.

And it is further ordered that the appearance of the claimants be, and the same is, hereby ordered.

(Endorsed:) Vol. 21, No. 510, 511, 512, 528. United States district court for the southern district of New York. The Steamship "Pennsylvania," &c., *ads.* Nathan Solliday and three other suits. Order waiving service of att. and ent. cl'ts app'ce. John Chetwood, proctor for cl'm'ts. Filed the 2d day of Dec., 1867.

218 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: the Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," her Tackle, etc.,
asm.
NATHAN SOLLIDAY.

And now the National Steamship Company intervening as claimants for the interests of themselves in the said steamship, etc., appears before the honorable court, and makes claim to the said steamship, etc., as the same are attached by the marshal, under process of this court, at the instance of Nathan Solliday; and the said national Steamship Company aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and *bona fide* owners of the said steamship, and that no other person is the owner thereof, and the said company the true and lawful bailee thereof. As such owners wherefore they pray to defend accordingly.

THE NATIONAL STEAMSHIP CO.,
By F. W. J. HURST, *Manager.*

JOHN CHETWOOD,
Proctor for Claimant.

219 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, deposes and says that he resides in the city of New York; that he is the manager of the National Steamship Company above named, and that the owners of said steamship reside in Liverpool, England; and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated

on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed, this 29th day of November, 1867, before me. JOHN A. OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, No. 510. United States district court for the southern district of New York. The Steamship "Pennsylvania," etc., *asm.* Nathan Solliday. John Chetwood, proctor for claimant. Claim of owners. Filed 29th day of November, 1867.

220 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," her Tackle, etc.
asm.
THE LEHIGH COAL AND NAVIGATION COMPANY AND REBECCA GRAY, Administratrix, Etc.

And now, The National Steamship Company intervening as claimants for the interest of themselves in the said steamship, etc., appears before the honorable court and makes claim to the said steamship, etc., as the same are attached by the marshal, under process of this court, at the instance of The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, etc.; and the said National Steamship Company aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above-named are the true and *bona fide* owners of the said steamship, and that no other person is the owner thereof; and the said company is the true and lawful bailee thereof, as such owners; wherefore they pray to defend accordingly.

THE NATIONAL STEAMSHIP COMPANY,
By F. W. J. HURST, *Manager.*

JOHN CHETWOOD,
Proctor for Claimant.

221 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, deposes and says that he resides in the city of New York; that he is the manager of the National Steamship Company above named, and that the owners of said steamship reside in Liverpool, England; and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated

on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed this 29th day of November, A. D. 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, No. 511. United States district court for the southern district of New York. The Steamship Pennsylvania, etc. *asm.* The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, etc. John Chetwood, proctor for claimant. Claim of owners. Filed the 29th day of November, 1867.

222 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the twenty-ninth day of November, in the year of our Lord one thousand eighth hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP PENNSYLVANIA, &c., *asm.* WILLIAM BASSETT.

And now, the National Steamship Company, intervening as claimants for the interest of themselves in the said steamship, etc., appears before the honorable court and makes claim to the said steamship, etc., as the same are attached by the marshal, under process of this court, at the instance of William Bassett; and the said National Steamship Company aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and *bona fide* owners of the said steamship, and that no other person is the owner thereof; and the said company is the true and lawful bailee thereof, as such owners; wherefore they pray to defend accordingly.

THE NATIONAL STEAMSHIP COMPANY,
By F. W. J. HURST, *Manager.*

JOHN CHETWOOD,
Proctor for Claimant.

223 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, deposes and says that he resides in the city of New York, that he is the manager of the National Steamship Company, above named, and that the owners of said steamship reside in Liverpool, England, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steamship, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed this twenty-ninth day of November, A. D. 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, No. 512, United States district court for the southern district of New York, The Steamship "Pensylvania," etc., *asm.* William Bassett. John Chetwood, proctor for claimant. Claim of owners. Filed the 29th day of November, 1867.

224 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Friday, the twenty-ninth day of November, in the year of our Lord one thousanp eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," her Tackle, etc.,
asm.
EDWARD L. MORRIS AND BENJAMIN F. ELY.

And now the National Steamship Company, intervening as claimants for the interest of themselves in the said steamship, etc., appears before the honorable court and makes claim to the said steamship, etc., as the same are attached by the marshal, under process of this court, at the instance of Edward L. Morris and Benjamin F. Ely; and the said The National Steamship Company aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and *bona fide* owners of the said steamship, and that no other person is the owner thereof, and the said company the true and lawful bailee thereof, as such owners; wherefore they pray to defend accordingly.

THE NATIONAL STEAMSHIP CO.,
By F. W. J. HURST, *Manager.*
JOHN CHETWOOD, *Proctor for Claimant.*

225 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, deposes and says that he resides in the city of New York, and that he is the manager of the National Steamship Company above named, and that the owners of said steamship reside in Liverpool, England, and that this deponent is duly authorized to put in this claim on behalf of the owners of the said steamship, etc.; and that the said claim is true, of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed this 29th day of November, A. D. 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, No. 528. United States district court for the southern district of New York. The Steamship "Pennsylvania," etc., *asm.* Edward L. Morris and Benjamin F. Ely. John Chetwood, proctor for claimant. Claim of owners. Filed the 29th day of November, 1867.

226 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the ninth day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," &c.
asm.
SETH CALDWELL, JR., and Others.

And now, F. W. J. Hurst, intervening as manager and agent, for the interest of the National Steamship Company, in the said steamship "Pennsylvania," appears before the honorable court, and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Seth Caldwell, Jr., and others. And the said Hurst avers that the company was in possession of the said steamship at the time of the attachment thereof; and that the company above named is the true and *bona fide* owner of the said steamship; and that no other person is the owner thereof; and the said Hurst the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

THE NATIONAL STEAMSHIP CO.,
By F. W. J. HURST, *Manager and Agent.*
JOHN CHETWOOD, *Proctor for Claimant.*

227 SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst, being duly sworn, deposes and says that he resides in the city of New York; that he is the manager and agent of the company within named; that the owners of the said steamship reside in Liverpool, England, and elsewhere; and this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship, &c.; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

F. W. J. HURST.

Sworn to and subscribed this ninth day of December, A. D. 1867, before me.

JOHN A OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, No. 547. United States district court for the southern district of New Yoak. The steamship "Pennsylvania,"

&c., *asm.* Seth Caldwell, Jr., and others. John Chetwood, proctor for claimant. Claim of agent. Filed the 9th day of December, 1867.

228 *Stipulation entered into Pursuant to the Rules and Practice of this Court. Filed the 29th day of November,* 1867.

287.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by William Bassett, against the steamship "Pennsylvania," her tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned and sold to pay the demands of said libellants, and the parties hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by The National Steamship Company:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the appellate court.

NATIONAL STEAMSHIP COMPANY.
F. W. J. HURST, *Manager.*
PETER H. WALSH.

Taken and acknowledged, this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

229 SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst and Peter H. Walsh, parties to the above stipulation, being duly sworn, doth each depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

PETER H. WALSH.
F. W. J. HURST.

Sworn to, this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 29th day of November, 1867.

——— ———, *Clerk.*

Stipulation entered into Pursuant to the Rules and Practice of this Court. Filed the 29th day of November, 1867.

285.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Nathan Solliday, against the steamship "Pennsylvania," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned and sold to pay the demands of said libellants; and the parties hereto, hereby consenting that, in case of default or contumacy on the part of the complainants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands; and whereas, also, a claim has been filed in said cause by The National Steamship Company:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

NATIONAL STEAMSHIP COMPANY.
By F. W. J. HURST, *Manager.*
PETER H. WALSH.

Taken and acknowledged this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst and Peter H. Walsh, parties to the above stipulation, being duly sworn, doth each depose and say: That he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. W. J. HURST.
PETER H. WALSH.

Sworn to, this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 29th day of November, 1869.

——— ———, *Clerk.*

231 *Stipulation entered into Pursuant to the Rules and Practice of this Court.*

288.

Filed this 29th day of November, 1867.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court, on the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Edward L. Morris and Benjamin F. Ely against the steamship "Pennsylvania," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned and sold to pay the demands of said libellants. And the parties hereto, hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands. And whereas, also a claim has been filed in said cause by the National Steamship Company—

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all the costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

THE NATIONAL STEAMSHIP COMPANY.
F. W. J. HURST, *Manager.*
PETER H. WALSH.

Taken and acknowledged this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

232 SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst and Peter H. Walsh, parties to the above stipulation, being duly sworn, doth each depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

F. W. J. HURST.
PETER H. WALSH.

Sworn to this 29th day of November, 1867, before me.

JOHN A. OSBORN,
U. S. Commissioner

Recorded the 29th day of November, 1867.

———— ————, *Clerk.*

Stipulation entered into Pursuant to the Rules and Practice of this Court. Filed the 29th day of November, 1867.

286.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, &c., against the steamship "Pennsylvania," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned and sold to pay the demands of said libellants, and the parties hereto, hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and
233 lands: and, whereas, also, a claim has been filed in said cause by the National Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

NATIONAL STEAMSHIP COMPANY.
By F. W. J. HURST, *Manager.*
PETER H. WALSH.

Taken and acknowledged this 29th day of Nov., 1867, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst and Peter Walsh, parties to the above stipulation, being duly sworn, doth each depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. W. J. HURST.
PETER H. WALSH.

Sworn to this 29th day of November, 1867, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 29th day of November, 1867.

——— ———, *Clerk.*

234 *Stipulation entered into Pursuant to the Rules and Practice of this Court. Filed the 9th day of December*, 1867.

308.

District Court of the United States for the Southern District of New York.

Whereas a libel was filed in this court on the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Seth Caldwell, Jr., *et al.*, against the steamship "Pennsylvania," her engines, tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned and sold to pay the demands of libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or their sureties execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by the National Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon appeal, by the appellate court.

THE NATIONAL STEAMSHIP CO.,
By F. W. J. HURST, *Manager*.

Taken and acknowledged this 9th day of December, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

235 SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. W. J. Hurst, party to the above stipulation, being duly sworn, doth depose and say: That he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. W. J. HURST.

Sworn to this 9th day of December, 1867, before me.

———— ————,
U. S. Commissioner.

Recorded the 9th day of December, 1867.

———— ————, *Clerk.*

District Court of the U. S. of America for the Southern District of New York.

Filed the 29th day of November, 1867.

Know all men by these presents, that we, The National Steamship

Company and Peter H. Walsh, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of twenty-seven hundred dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Nathan Solliday, libellant, against the steamsship "Pennsylvania," her tackle, etc., for the sum of thirteen hun-
236 dred and fifty dollars, on which process of attachment has issued, and the said steamship, etc., is in custody of the marshal under the said attachment, and F. W. J. Hurst, manager of said company, has applied for a discharge of said steamship, etc., from the custody of the marshal, and has filed a claim claiming the said steamship, etc., as owner, and has filed a stipulation for the claimant's cost, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden The National Steamship Company and Peter H. Walsh shall abide by and perform the decree of this court, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP CO., [L. S.]
By F. W. J. HURST, *Manager.*
PETER H. WALSH. [L. S.]

Sealed and delivered, and taken and acknowledged this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Peter H. Walsh, being duly sworn, deposes and says: That he resides in the southern district of New York, and that he is worth the sum of fifty-four hundred dollars over and above all his just debts and liabilities.

PETER H. WALSH.

Sworn to this 29th day of November, A. D. 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner

I approve of the sufficiency of the sureties to the within bond.
Dated the 29th day of November, 1867.
Recorded the 29th day of November, 1867.

237 20.

District Court of the U. S. of America for the Southern District of New York.

Filed the 29th day of November, 1867.

Know all men by these presents, that we, The National Steamship Company and Peter H. Walsh, are held and firmly bound unto Robert Murray; marshal of the United States for the southern district of New York, in the sum of one thousand dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrtors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 29th day of November, in the year of our Lord one thousand eight hunded and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 29th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by Edward L. Morris and Benjamin F. Ely, libellants, against the steamship "Pennsylvania," etc., for the sum of four hundred and ninety-eight dollars, on which process of attachment has issued, and the said steamship, etc., is in custody of the marshal under the said attachment, and F. W. J. Hurst, manager of said company, has applied for a discharge of said steamship, etc., from the custody of the marshal, and has filed a claim claiming the said steamship, etc., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above bounden The National Steamship Company and Peter H. Walsh shall abide by and perform the decree of this court,
238 then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP CO., [L. S.]
By F. W. J. HURST, *Manager.*
PETER H. WALSH. [L. S.]

Sealed and delivered and taken and acknowledged, this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Peter H. Walsh, being duly sworn, deposes and says: That he resides in the southern district of New York, and that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

PETER H. WALSH.

Sworn to, this 29th day of November, A. D. 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 29th day of November, 1867.
Recorded the 29th day of November, 1867.

239 18.

District Court of the U. S. of America for the Southern District of New York.

Filed the 29th day of November, 1867.

Know all men by these presents, that we, The National Steamship Company and Peter H. Walsh, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of three thousand and seventy-seven dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, libellants, against the steamship "Pennsylvania," &c., for the sum of fifteen hundred and and thirty-eight dollars and fifty cents, on which process of attachment has issued, and the said steamship, &c., is in custody of the marshal under the said attachment, and F. W. J. Hurst, manager of said company, has applied for a discharge of said steamship, &c., from the custody of
240 marshal, and has filed a claim claiming the said steamship, &c., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above bounden The National Steamship Company and Peter H. Walsh shall abide by and perform the decree of this court, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP CO., [L. S.]
By F. W. J. HURST, *Manager.*
PETER H. WALSH. [L. S.]

Sealed and delivered, and taken and acknowledged, this 29th day of November, 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Peter H. Walsh, being duly sworn, deposes and says: That he

resides in the southern district of New York; that he is worth the sum of six thousand one hundred and fifty-four dollars over and above all his just debts and liabilities.

PETER H. WALSH.

Sworn to, this 29th day of November, A. D. 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 29th day of November, 1867.
Recorded the 29th day of November, 1867.

241 17.

District Court of the U. S. of America for the Southern District of New York.

Filed the 29th day of November, 1867.

Know all men by these presents, that we, The National Steamship Company and Peter H. Walsh, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of thirty-four hundred dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by William Bassett, libellant, against the steamship "Pennsylvania," her tackle, etc., for the sum of seventeen hundred dollars, on which process of attachment has issued, and the said steamship, etc., is in custody of the marshal under the said attachment, and F. W. J. Hurst, president and agent of the above-named company, has applied for a discharge of said steamship, etc., from the custody of the marshal, and has filed a claim claiming the said steamship, etc., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

242 Now, therefore, the condition of this obligation is such, that if the above-bounden The National Steamship Company and Peter H. Walsh shall abide by and perform the decree of this court, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP COMPANY, [L. S.]
By F. W. J. HURST, *Manager.*
PETER H. WALSH. [L. S.]

Sealed and delivered and taken and acknowledged, this 29th day of November, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Peter H. Walsh, being duly sworn, deposes and says: That he resides in the southern district of New York; that he is worth the sum of sixty-eight hundred dollars over and above all his just debts and liabilities.

PETER H. WALSH.

Sworn to, this 29th day of November, A. D. 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 29th day of November, 1867.
Recorded the 29th day of November, 1867.

243 25.

District Court of the U. S. of America for the Southern District of New York.

Filed the 9th day of December, 1867.

Know all men by these presents, that we, The National Steamship Company and F. W. J. Hurst and Welcome R. Beebe, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of two thousand dollars, to be paid to the said Robert Murray; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the ninth day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Seth Caldwell, Jr., *et al.*, libellants, against the steamship "Pennsylvania," her engine, tackle, &c., for the sum of one thousand dollars, on which process of attachment has issued, and the said steamship, &c., is in custody of the marshal under the said attachment; and F. W. J. Hurst, agent of the National Steamship Company, has applied for a discharge of said steamship, &c., from the custody of the marshal, and has filed a claim claiming the said steamship, &c., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such that if the above-bounden The National Steamship Company and F. W.
244 J. Hurst and Welcome R. Beebe shall abide by and perform

the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE NATIONAL STEAMSHIP CO., [L. S.]
By F. W. J. HURST, *Manager.*
F. W. J. HURST. [L. S.]
W. R. BEEBE. [L. S.]

Sealed and delivered and taken and acknowledged, this 9th day of December, 1867, before me—

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

F. W. J. Hurst and W. R. Beebe, being duly sworn, each deposes and says: That he resides in the southern district of New York; that he is worth the sum of four thousand dollars over and above all his just debts and liabilities.

F. W. J. HURST.
W. R. BEEBE.

Sworn to, this 9th day of December, A. D. 1867, before me—
JOHN A. OSBORN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated this 9th day of December, 1867.
Recorded the 9th day of December, 1867.

Approved:
POST & BISSELL, *Proctors.*
J. B. BISSELL, *Advocate.*

Approved:
SAM. BLATCHFORD, *District Judge.*

245 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the 7th day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "PENNSYLVANIA," &c., *ads.* SETH CALDWELL, Jr., *et al.* } 21–547.

On filing claim and stipulation for claimants' costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge: On motion of John Chetwood, proctor for the claimants, it is ordered that the appearance of the claimants be, and the same is hereby, entered, and that a copy of this order be delivered to the marshal.

(Endorsed:) Vol. 21, No. 547. United States district court for

the southern district of New York. The Steamship "Pennsylvania," &c., *ads.* Seth Caldwell, Jr., *et al.* Order to discharge. John Chetwood, proctor for claimants. Filed the 7th day of December, 1867.

246 To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of the National Steamship Company to the libel of Nathan Solliday against the steamer "Pennsylvania," her tackle, etc., respectfully shows:

First. That the claimants are and were the true and only owners of the said steamer "Pennsylvania" at the times stated in the libel, and on proper stipulations the said vessel has been delivered to them.

Second. That the claimants except to so much of the libel as claims to recover in the name of the libellant as part owner, without setting out and making parties the other owners.

Third. That the claimants except to the libel, and for cause of exception show that it does not set up facts sufficient to enable libellant to recover in his own name.

Fourth. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Fifth. That the claimants have no knowledge of the matters stated in the second, third, and fourth articles of the libel, but from information which they believe to be true, the claimants deny the same and allege the facts to be that the said steamer "Pennsylvania" started on her usual voyage on her usual course down the river, and when proceeding to sea the steam-tug was made a little on the port bow of the steamer; that the steamer immediately ported her helm, as she was bound to do, and the steamer sheered to the westward, and no collision would have happened, but the tug stopped, and the tide swept the barge across the course of the steamer; upon
247 discovery of which the steamer was stopped and backed, and further sheered to the west, but in consequence of the barges being without persons to steer them, they swept with the tide against the steamer, and whatever injury occurred was in consequence thereof, and without any fault on the part of the claimants, their agents, or servants; and that the collision occurred wholly by the fault of the tug, and without any fault on the part of the steamer; the usual and proper look-outs having been stationed, and being in performance of their duties before and at the time of the collision, and all proper and ordinary precautions being taken to avoid any collision.

Sixth. That the claimants, further answering on information and belief, say that they deny the statements in the fifth and sixth articles of the libel.

Seventh. That all and singular the premises stated in this answer are true.

Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellant, to condemn him in costs and otherwise right and justice in the premises to administer.

F. W. J. HURST,
Agent N. S. S. Co.

JOHN CHETWOOD, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, on his oath, says: That he is managing agent in the United States of the claimants; that he has read the foregoing claim and answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

248

F. W. J. HURST.

Sworn to before me, this 31st day of Dec., 1867.

[SEAL.] WALTER E. SMITH,
Notary Public, N. Y. City.

(Endorsed:) 21–510—U. S. district court, southern district of New York. Nathan Solliday *vs.* The S. S. "Pennsylvania," etc. Answer. John Chetwood, proctor, 74 Broadway, N. Y. Filed Dec. 31st, 1867.

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of the National Steamship Company to the libel of the Lehigh Coal and Navigation Company, and of Rebecca Gray, administratrix of Wilson W. Gray, deceased, against the steamer "Pennsylvania," her tackle, &c., respectfully shows:

First. That the claimants are, and were, the true and only owners of the said steamer "Pennsylvania" at the several times stated in the libel, and on proper stipulations the said vessel has been delivtered to them.

Second. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Third, that the claimants have no knowledge of the matters stated in the second, third, and fourth articles of the libel; but from information which they believe to be true, the claimants deny the same, and allege the facts to be, that the said steamer "Pennsylvania" started on her usual voyage on her usual course down river, and when proceeding to sea the said steam-tug was made a little on the port bow of the steamer; that the steamer immediately ported her helm, as she was bound to do, and the steamer sheered to the westward, and no collision would have happened, but the tug stopped and the tide swept the barges across the course of the steamer, upon discovery of which the steamer was stopped and backed, and further sheered to the west; but in consequence of the barges being without persons to steer them, they swept with the

249

tide against the steamer, and whatever injury occurred was in consequence thereof, and without any fault on the part of the claimants, their agent, or servants, and that the collision occurred wholly by the fault of the barges, and without any fault on the part of the steamer, the usual and proper look-outs having been stationed and being in the performance of their duties before and at the time of the collision, and all proper and ordinary precautions being taken to avoid any collision.

Sixth. That the claimants, further answering, on information and belief, say that they deny the statements in the fifth and sixth articles of the libel.

Seventh. That all and singular the premises in this answer alleged are true.

Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellants, and to condemn them in costs, and otherwise right and justice to administer in the premises.

F. W. J. HURST,
Agent N. S. S. Co.

JOHN CHETWOOD, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, says: That he is the
250 managing agent of the claimants; that he has read the foregoing claim and answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this 31st day of December, 1867.
[SEAL.] WALTER E. SMITH,
Notary Public, N. Y. City.

(Endorsed:) 25–511. United States district court, southern district of New York. The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, *vs.* the steamship "Pennsylvania," &c. Answer. John Chetwood, proctor, 74 Broadway, New York. Filed Dec. 31, 1867.

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of the National Steamship Company to the libel of William Bassett against the steamer "Pennsylvania," her tackle, etc., respectfully shows:

First. That the claimants are and were the true and only owners of the said steamship "Pennsylvania" at the several times stated in the libel, and on proper stipulations the said vessel has been delivered to them.

Second. That the claimants except to so much of the libel as

claims to recover in the name of the libellant as part owner, without setting out and making parties the other owners.

Third. That the claimants except to the libel, and for cause
251 of exception show that it does not set up facts sufficient to enable libellant to recover in his own name.

Fourth. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Fifth. That the claimants have no knowledge of the matters stated in the second, third, and fourth articles of the libel, but from information which they believe to be true the claimants deny the same, and allege the facts to be, that the said steamer "Pennsylvania" started on her usual voyage on her usual course down the river, and when proceeding to sea the said steam tug was made a little on the port bow of the steamer; that the steamer immediately ported her helm, as she was bound to do, and the steamer sheered to the westward, and no collision would have happened, but the tug stopped, and the tide swept the barges across the course of the steamer, upon discovery of which the steamer was stopped and backed, and further sheered to the west, but in consequence of the barges being without persons to steer them, they swept with the tide against the steamer, and whatever injury occurred was in consequence thereof, and without any fault on the part of the claimants, their agent or servants, and that the collision occurred wholly by the fault of the tug and barges, and without any fault on the part of the steamer, the usual and proper look-outs having been stationed, and being in the performance of their duties before and at the time of the collision, and all proper and ordinary precautions being taken to avoid any collision.

Sixth. That the claimants, further answering, on information and belief, say that they deny the statements in the fifth and sixth articles of the libel.

Seventh. That all and singular the matters in this answer alleged are true.

252 Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellant, to condemn him in costs, and otherwise right and justice to administer in the premises.

F. W. J. HURST,
Agent N. S. S. Co.

JOHN CHETWOOD, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, says that he is managing agent in the United States of the National Steamship Company; that he has read the foregoing claim and answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this 31st day of December, 1867.
[SEAL.] WALTER E. SMITH,
Notary Public, N. Y. City.

(Endorsed:) 21-512. United States district court for the southern district of New York. William Bassett *vs.* The Steamship "Pennsylvania," &c. Answer, John Chetwood, proctor, 74 Broadway, New York. Filed December 31st, 1867.

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of the National Steamship Company to the
253 libel of Edward L. Morris and Benjamin F. Ely, against the steamer "Pennsylvania," her tackle, &c., respectfully shows:

First. That the claimants are and were the true and only owners of the said steamship "Pennsylvania," at the several times stated in the libel, and on proper stipulations the said vessel has been delivered to them.

Second. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Third. That the claimants have no knowledge of the matters stated in the second, third, and fourth articles of the libel, but from information which they believe to be true, the claimants deny the same, and allege the facts to be that the said steamer "Pennsylvania," started on her usual voyage, on her usual course down the river; and when proceeding to sea, the said steam tug was made a little on the port bow of the steamer; that the steamer sheered to the westward, and no collision would have happened, but the tug stopped, and the tide swept the barges across the course of the steamer, upon discovery of which the steamer was stopped and backed and further sheered to the west; but in consequence of the barges being without persons to steer them, they swept with the tide against the steamer, and whatever injury occurred was in consequence thereof, and without any fault on the part of the claimants, their agents, or servants, and that the collision occurred wholly by the fault of the tug and barges, and without any fault on the part of the steamer, the usual and proper lookouts having been stationed, and being in the performance of their duty before and at the time of the collision, and all proper and ordinary precautions having been taken to avoid any collision.

Fourth. That the claimants, further answering, on information and belief, say that they deny the statements in the fifth and sixth articles of the libel.

254 Fifth. That all and singular the matters in this answer alleged are true.

Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellants, to condemn them in costs, and otherwise right and justice in the premises to administer.

F. W. J. HURST,
Agt. Nat. S. S. Co.

JOHN CHETWOOD,
Proctor for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, says: That he is the managing agent in the United States of The National Steamship Company; that he has read the foregoing claim and answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this January 11, 1868.

WALTER E. SMITH,
Notary Public, N. Y. City.

(Endorsed:) 21–528. U. S. district court, southern dist. of New York. Edward L. Morris and Benjamin F. Ely *ag'st* the steamship "Pennsylvania." Answer. John Chetwood, Esq., proc. for claimant, 74 Broadway, N. Y. Filed January 11, 1868.

255 *In Admiralty.*

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of The National Steamship Company to the libel of Seth Caldwell, Jr., Nathaniel B. Gordon, Frank A. Hall, and Samuel B. Young, against the steamship "Pennsylvania," her tackle, &c., respectfully shows:

First. That the claimants are and were the true and only owners of the said steamship "Pennsylvania," at the several times stated in the libel, and on proper stipulations the said vessel has been delivered to them.

Second. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the first article of the libel, and therefore deny the same.

Third. That the claimants have no knowledge sufficient to form a belief as to the matters stated in the second article of the libel, and therefore deny the same.

Fourth. That the claimants have no knowledge of the matters stated in the third and fourth articles of the libel, but from information which they believe to be true the claimants deny the same, and allege the facts to be that the said steamer "Pennsylvania" started on her usual voyage on her usual course down the river, and when proceeding to sea the said steam tug was made a little on the port bow of the steamer; that the steamer immediately ported her helm, as she was bound to do, and the steamer sheered to the westward, and no collision would have happened, but the tug stopped and the tide swept the barges across the course of the steamer, upon discovery of which the steamer was stopped and backed, and
256 further sheered to the west; but in consequence of the barges being without persons to steer them, they swept with the tide against the steamer, and whatever injury occurred was in con-

sequence thereof, and without any fault on the part of the claimants, their agents or servants, and that the collision occurred wholly by the fault of the tug and barges, and without any fault on the part of the steamer, the usual and proper look outs having been stationed and being in the performance of their duty before and at the time of the collision, and all proper and ordinary precautions having been taken to avoid any collision.

Fifth. The claimants deny that the "Pennsylvania" was the cause of the collision, or that her captain, officers, or men, the servants of the claimants, were in any way responsible for the same, and allege that a good lookout was kept on board the "Pennsylvania."

Sixth. The claimants deny the sixth and seventh articles of the libel.

Seventh. That all and singular the premises in this answer alleged are true.

Wherefore these claimants pray that this honorable court will be pleased to pronounce against the libellants, condemn them in costs, and otherwise right and justice to administer.

F. W. J. HURST,
Agent N. S. S. Co.

JOHN CHETWOOD, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, says: That he is the managing agent in the United States of the National Steamship Company; that he has read the foregoing claim and answer and knows the contents thereof, and that the same is true of his own knowl-
257 edge, except as to the matter therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this 31st day of December, 1867.
[SEAL.] WALTER E. SMITH,
Notary Public, N. Y. City.

(Endorsed:) 21–547. U. S. district court for the southern district New York. Seth Caldwell, Jr., *et al. vs.* The Steamship "Pennsylvania," &c. Answer. John Chetwood, proctor for claimants, 74 Broadway, New York. Filed Dec. 31, 1867.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Thursday, the 18th

day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

NATHAN SOLLIDAY *et al.*
vs.
THE STEAMSHIP "PENNSYLVANIA." } 21–510.

REBECCA GRAY, Administratrix, &c., *et al.*,
vs.
THE SAME. } 21–511.

258

WILLIAM BASSETT *et al.*
vs.
THE SAME. } 21–512.

EDWARD L. MORRIS *et al.*
vs.
THE SAME. } 21–528.

SETH CALDWELL *et al.*
vs.
THE SAME. } 21–547.

The three first above entitled causes being called in their order on the day calendar, the two last above-entitled causes being reserved generally:

Ordered by the court, that the five actions be heard together, one decree to be entered in said five actions.

Pleadings read (the libel in suit of Bassett being read as the libels in the other four actions).

Evidence for libellants (witnesses sworn in the five actions):

John Conlan, sworn.
George Founett, "
Andrew Tibbins, "
Elias Delanoy, "
John Daly, "
Patrick Riley, "

259 March 19th, cause continued.

Evidence for Appellants.

Daniel Vandewater, sworn.
William Bassett, "
Nathan Solliday, "
John M. Weeks, "

Rules prescribed by supervising inspector.

Ownership of all libellants admitted.

Letters of adm'r of Mrs. Gray, &c., demand on Hurst.

Evidence for Claimants.

Deposition of David M. S. Powell, read.
" Frederick Killing, "
" John Ferber, "
" Robert Evans, "
" Henry Murphy, "

Mr. Bissell moves to amend libel in suit of Seth Caldwell. Motion granted.

Mr. Donohue argues for claimants.
Mr. Max Goepp " libellants.
Briefs and points to be handed to court.

C. A. V.

260 *Judge Blatchford's Minutes of Testimony on Hearing.*

U. S. District Court. March 18, 1869.

NATHAN SOLLIDAY *et al.* } No. 149, and four other cases
vs. } ags't same vessel, No. 150,
THE STEAMSHIP "PENNSYLVANIA," etc. } 151, 152, and 237.

JOHN CONLAN, sworn: Pilot on steamboat since September, 1865; before that had been deck hand on steam tugs six or seven years between New York and New Brunswick; been well acquainted with navigation between these two points. October 24, 1867, I was on the steam tug "Princeton" as her pilot; she had in tow fourteen boats, six of them chunkers, and eight barges, loaded with coal; chunkers are small boats hinged in middle; two boxes, joined by hinge in centre. We had two boats on each side fast to steamboat—four barges; they could not swing—fast stem and stem—four more fast astern of them, one to stern of each of the first four; six chunkers in third row; three on each side, fastened to stern of second tier; the three chunkers destroyed were the three chunkers on port side. On extreme port side of last row was Gray's boat; next inside of that, don't know, nor the next inside; it was a nice morning; nice calm weather; water as smooth as a pond; tide was flood, last of flood. When I first saw the steamship we were in middle of Hudson river, between pier 1 and Courtland street, going up; it was not sunrise; I thought it was about half-past five; it was daylight, not broad daylight, but pretty near; could see a mile or two miles; a mile anyhow distinctly; we were going with course of
261 river; don't know what course of river is there; don't think I ever looked at compass there; I saw the "Pennsylvania" myself; I was in the pilot-house; was steering; the "Pennsylvania" was coming down river; when I first saw her she was heading a little in toward New York shore; I could see the whole bluff of her starboard bow; I think she was directly ahead of us, and about, I should judge, 2,000 feet off; I judge she was under full headway; I blowed two whistles for her to keep her course and pass us to eastward I had rules and regulations of inspectors posted in pilot-house at time; blowing two whistles indicated that we would keep to left; I continued my course; I heard no answering signal from

the "Pennsylvania;" she did not alter her course right away when I blowed the whistle, but in about half a minute or a minute she did; when she changed she was, I guess, about 12 or 1,500 feet off; when she first altered her course she took a little sheer to westward, and got pretty near head for us; then I stopped the "Princeton;" I did it immediately; I backed her right away; I rung an extra bell to work her strong; after I stopped the boat I blew five or six whistles or more of danger; I think our baat made about eleven turns back or twelve; the "Pennsylvania" came right straight down alongside of our spur boats, alongside the two on the port side; after she headed for "Princeton" by sheer to westward I did not observe any other sheer she made; she was, I think, at seven or eight miles an hour speed wheh she went by pilot-house; I think our tow was entirely stopped still; then we stopped and backed, our tow spread right out with flood tide, except the four alongside; the port boats spread out to Jersey side and the starboard boats to New York side; the tug headed pretty nearly up the river; straight after she stopped; the "Pennsylvania" passed the spur boats about 20 feet; she then run into these three chunkers in the third tier, striking first the outside one, Capt. Gray's boat; did not see where she struck that boat; it tore that boat all to pieces, cut her in two,
262 destroyed her altogether; the after part of box of that boat went off ahead of ship's bow; the "Pennsylvania" went half a mile before she stopped; Captain Gray was drowned; next boat to that one was damaged badly, and leaked badly; the third boat sank; the forward part of Gray's boat was tore away from us; don't know if it sunk or whether it turned over and dumped coal out; when the "Pennsylvania's" bow got opposite tug I stopped backing and went ahead; captain gave orders to do so; this was to try and pull those after boats ahead out of line in which the "Pennsylvania" was going; if the "Pennsylvania" had kept on her first course she would have cleared us about 50 feet to starboard; when I blew the danger signal the steamer was 800 or 900 feet off; two and a half to three minutes from time I rang to back till the "Pennsylvania" passed; if, when "Pennsylvania" had come near, we had sheered to starboard, the boats on our port side would have tailed more towards Jersey side; it is easier to land at a dock against a tide; can alter course quicker going against tide than with it; the tide then was a good strong flood tide.

Cross examined:

The tug was a pretty powerful tug; she is among first class; can't tell how fast tide was, whether one mile or four; strong flood tide; can't swear it was or not running four, or not over one; I could see starboard bow of "Pennsylvania" 2,000 feet off; it was light enough for that; I was examined before.

(Diagram shown defendant, Exhibit No. 2, J. R. S.)

I don't believe I saw this before; I was examined on trial in superior court; a diagram was presented to me there; I never saw this diagram before; I don't believe I stated at that time that No. 1

on that diagram was the position in which I first saw the "Pennsylvania"; my boat had four deck hands, captain, pilot, two engineers, and two firemen; when I first saw the "Pennsylvania"
263 one of the deck hands was in pilot-house with me, helping me to steer; no one else; I did not see captain when I first saw "Pennsylvania;" don't know where he was; saw him two minutes or one and a half after I first saw "Pennsylvania"; I don't know where the other deck hands were when I first saw the "Pennsylvania;" did not see them then; had not seen any of them for four hours; one was with me at wheel four hours before; that morning we started from Amboy about half-past twelve o'clock; don't think it was later; did not look at time when started; came through Staten Island Sound; flood tide when left Amboy, runs towards Elizabethport; meet flood tide through Kills at Shooter's Island; then tide against us till get out of Kills; when first made "Pennsylvania" we were going through water about six miles an hour; not have been less; the first sheer "Pennsylvania" made was one I thought brought her heading for me; I could see no change in her from that time till she passed us; from time I blew my first two whistles I did not make any change or sheer of my vessel; from time I first saw "Pennsylvania" I made no change, but I kept straight up; the "Pennsylvania" I did not see hit the boat; when I looked and saw the boat against the "Pennsylvania" I had started to pull ahead; I did so when the "Pennsylvania" passed us; when the "Pennsylvania" passed my spur boats she passed pretty nearly parallel to the spur boats.

(Questions read to him from former testimony.)

I did not make mark No. 1 on Exhibit No. 2 at the place where "Pennsylvania" was when I first saw her; I did not say before, on former trial, that "Pennsylvania" was heading about down the river.

(Defendant's Exhibit No. 1, J. R. S., shown.)

I think I have seen before; on that No. 2 is where we
264 whistled, and No. 3 is where she sheered; I made the marks on that at former trial; the curved line is the course "Pennsylvania" took; No. 1 is where I first saw her; the sheer she took was a gradual sheer, and when she first sheered she did not seem to sheer faster than afterwards; commencement of sheer was about 150 feet off; the "Pennsylvania" made sheer before captain came up; I had blown whistle before the captain came up; she stopped sheer entirely before she passed us, and got on a course; I did nothing but what I have stated; when I say tug stopped, I mean stopped going through water; I think I made two turns ahead before she struck.

Redirect:

The pilot-house was about 35 feet above main deck, and about 35 or 40 feet from bow—nothing to obstruct lookout except flag-staff; from bow of tug to stern of last chunker, when under way, was

about 310 feet; as spread out after stopped tow, the whole was about 200 feet wide; before spread out by the tide they were about 110 feet wide; sometimes more; chunker about 10½ wide; between two inside chunkers was 45 or 50 feet; backing gave no stern way; when captain came up the "Pennsylvania" was coming right head for us; steamboat about 58 feet wide at paddle, each barge 17.6 wide (128 feet); I took wheel about fifteen minutes before collision; when tailed straight, the outside of chunkers and outside of barges were about in a line, neither projecting beyond the other.

Recross:

"Princeton" about 145 feet long, or 150; the boats alongside did not reach within 80 feet of our stern; they were 100 feet long—projected beyond our bow a little; the boats astern were 2 or 3 feet from stern of boats ahead; could step; the four boats astern were same length as those in front; could step from second row to chunkers; the boat was below Battery when I took wheel; I took it from captain; he went out of pilot-house before I saw
265 "Pennsylvania;" I did not see "Pennsylvania" when I first went into pilot-house.

GEORGE FOURATT sworn: Captain of tow-boat. Been on "Princeton" six years June next; had charge of a boat two years before that; during those eight years been employed between New Brunswick ond New York; was master of "Princeton" at collision; had wheel before Conlan took it; that was before reaching Battery—as "Princeton" came up opposite pier 2, went straight up river in middle, as near as possible; when I first saw "Pennsylvania" I was in pilot-house; I heard my boat blow two whistles before; I was then on main deck, and went into pilot-house; it was clear morning, nice, bright, water smooth, flood tide, high-water tide, running up very strong; about half-past five a. m. could see both shores very clearly; very bright morning; when I got into pilot-house I saw "Pennsylvania;" the tug was then going still straight up river; bow straight up river; "Pennsylvania" pretty close by; 400 or 500 yards off; she heading when I first saw her straight head into us; I thought when I got into pilot-house she had been stopped and backed; before I got into pilot-house she was stopped and backing; I heard no answering signal from "Pennsylvania," nothing either side to prevent "Pennnsylvania" from passing; she was going very fast, 6 or 7 miles through water; I could not see that "Pennsylvania" changed any, of any account; I thought she was coming right into us, but she cleared us on the port side 20 or 25 feet; she was going very fast; she struck the last tier; last boat on port side, near midship, not square on; after part of box severed from forward part, and "Pennsylvania" carried it on her bow ¼ of a mile or over, I should judge; while under headway if we had ported would have thrown the rear boat towards Jersey side, and across course of "Pennsylvania;" I heard pilot of "Princeton" blow several whistles after stopped and backed; six or eight whistles
266 quickly together; can sheer my boat quicker going against

tide, and can also stop her quicker going against tide; in my judgment a steamer is more manageable going against the tide.

Cross-examined:

I had been steering from Elizabethport till Conlan took it; one of deck hands in pilot-house with me; it was 11.45 when we left Perth Amboy; I began steering in neighborhood of 3 o'clock; when I went to wheel tide was flood with us where I took wheel; continued so till I turned beacon at Shooter's Island; after that, struck flood tide in Kills; continued against us till we passed New Brighton; I changed with Conlan along by Central railroad ferry from pilot-house; when I changed I went down on main deck; heard whistle not great while after I went down; when I heard whistle I was in engine-room door; I started and went up to pilot-house; don't know that I stopped on the way; 25 feet from the engine-room door; then 9 feet up; then 25 feet more; then 9 feet more up; then walk 40 or 50 feet forward; then get to pilot-house; did that by walking; at first did not go as fast as I could; on upper deck of all I walked faster than common; engine had been stopped before got to pilot-house; when I got to first stairs I heard one bell to slow, one to stop, and two to back; all had not rung when I got to first step; all pretty near together; when I got to pilot-house the "Pennsylvania" was 400 to 500 yards off, or not so far; at that time my boat was backing and continued to back till her bow got abreast of us; she passed pretty nigh parallel to our spur boats; saw no change in "Pennsylvania" after I first saw her; when "Pennsylvania's" bow at our spur boat's bow I told pilot to stop backing and go ahead; made two or three turns before collision.

(Diagram No. 2 shown.)

I marked a diagram; can't swear this is it; my recollection was good when I marked it; the "Pennsylvania" passed 20 or 25
267 feet from our spur boat, and in a line with her as near as I can judge; the boats were about middle of river; I had not seen "Pennsylvania" before I went below; the man with me at wheel staid at wheel with Conlan; pilot had wheel from Am boy to Elizabethport; the "Princeton" was heading straight up river.

ANDREW TIBBINS sworn: Engineer of "Princeton;" been engineer of her five years, 1st of last September; before that was in same employ as assistant engineer one year. October 24th, 1867, I was on the "Princeton;" I was standing by engine-room door with captain, and I heard two whisties blowing, about middle of river; straight up and down river above battery; about half way between Pier 1 and Cortland street; clear morning; water smooth; daylight; could see distinctly about river; could see either shore from where I stood; flood tide, last of flood; when I heard the whistle I did not look out; did not see "Pennsylvania;" then one bell to slow, one to stop; shortly after two whistles—not over a minute; I slowed and stopped, then two more bells rung to back; I backed her ten or eleven turns back; six turns back will stop her with tow;

I refer to that morning; I saw "Pennsylvania" right after she passed afterpart of our wheelhouse; she not over 18 or 20 feet off of outside boat; I think on port side of "Princeton;" next I see her strike outside scow on stern tier on port side; she sunk and one on inside sunk; middle one damaged; only part of first boat sunk; rest was carried away a quarter of a mile on ship's bow; speed of "Pennsylvania" was pretty fast when she went by us, near five or six miles an hour; not over a minute I think till boat got off her bow; after ten or eleven turns back a bell was rung to stop backing, and one also to go ahead; at that time I had not seen "Pennsylvania;" saw her immediately afterward; I obeyed bell and went ahead; made two and a half turns before collision.

268 Cross-examined:

Been on "Princeton" altogether six years 1st of last September; her engine will go as fast backward as forward; it makes seven revolutions a minute with a heavy tow; can stop immediately, with heavy tow alongside, suddenly; I stopped engine as quick as I could; at first made four and a half turns a minute back; then increased to six and a half or seven turns a minute; then when went ahead again made about four turns a minute; when two whistles blew, captain talking to me; then he went away; I saw the "Pennsylvania" strike; got orders to stop going ahead just as "Pennsylvania" struck; the engine was stopped, and I saw the ship carrying away the boat; the engine was working up to time of collision; I could work engine and see collision; when ship struck scow I think engine was stopped after backing. I was examined as a witness before.

Redirect:

After I began backing I heard six or seven whistles from tug altogether; after the six or seven whistles it was maybe one and a half to two minutes to collision.

ELIAS DELANOY sworn: Second engineer of "Princeton"; was so at collision; remember that morning; we were in middle of river, opposite Battery, heading straight up and down; clear, nice morning, high water; flood tide still running up; just getting light; could see both shores distinctly; I heard whistles; can't tell how many; I was in forward engine-room; I did not go out; bells rung, one to slow, one to stop, and two to go back, and little bell to back her strong; the bells were very near together; we backed ten or eleven turns; I staid in the engine-room; I heard five, six, or seven rapid whistles after that, close together; only thing I saw of "Pennsylvania" was when she was going by head boats, 15 to 20 feet off on port side, six to seven knots an hour; about that time bells rung
269 to stop backing and go ahead; order obeyed; two or three turns ahead made, then bell to stop; I did not see collision; after collision over I looked aft and saw that boats were sunk; saw "Pennsylvania"; she was about standing still then, quarter of a mile off.

Cross-examined:

Made two to three turns ahead before stopped; stopped about at collision; two engine-rooms; two engines on one shaft must act together; when working back can turn right ahead by hand; with tow like that can make seven turns a minute, and about four when start to go back, and about four when start ahead again.

JOHN DALY sworn: Doing nothing now; been deck hand on "Princeton"; been in that line last three or four years; I was on "*Pennsylvania*" at collision; when tow was near Battery I was lying asleep; I waked; I saw collision; heard bells and whistles; I was on upper deck when I first saw ship by our room; going to call one of deck hands; the whistles had been blown I think at that time; did not look to see where tow was; as I walked to room I saw "Pennsylvania"; she was 200 or 300 yards off, maybe more; can't give any idea of it; she was, when I first saw her, heading right for tug; paid no attention to bells; she came right down along by tug's bow on port side; I saw her strike; hit chunker on after-box; steamer went considerable distance after collision; hard to tell exactly; she appeared to be going pretty fast.

Cross-examined:

I did not continue to look at ship till collision; I thought when I first saw her that if she kept on she would run down tug; I came down on main deck, and then saw "Pennsylvania" going by second tier of boats.

PATRICK RILEY sworn; I was on "Princeton" at collision; deck hand; I was by saloon door on main deck, on starboard side, just before collision; I heard two whistles blown; could see all over river; smooth water, flood tide; I saw "Pennsylvania" coming; I first saw her when I got to forward engine-room, to gangway; then "Pennsylvania" was about 120 to 140 yards off; she was steering right for the tug; I heard bells rung as I was going up gangway; engine working back when I got to forward engine-room; I heard afterward six, seven or eight short whistles from "Princeton;" I heard no answering signals from "Pennsylvania" to any of the whistles from "Princeton;" if anything "Pennsylvania" headed for Jersey shore when I first saw her, and she continued that course; she was going pretty fast when she went past; I ran aft to see if she would strike stern boats; I thought she would clear the forward boats; I saw the collision; she struck kind of glancing blow at angle; "Pennsylvania" went quite a distance; I saw box across bow of steamer; when "Pennsylvania" struck, one box went on one side of bow and the other went down.

Cross-examined:

From saloon door to forward engine-room, is over 60 feet; at saloon door I heard whistles, and when I got to forward engine-room it was working back; I thought there would be a collision and I went back; "Pennsylvania" was abreast of second tier of

boats' bows when I got to after part of wheel-house; bows of second tier came to there; chunkers had spread out quite considerable and lay right across track.

MARCH 19, 1869.

DANIEL VANDEWATER sworn: Was on "Princeton," October 24, 1867, as fireman; it was flood tide; tow was about middle of river, heading up river; first that attracted my attention was bells ringing to stop and back; engine then went back; a minute or two after that I saw the "Pennsylvania;" shortly after, I was coming up out of fire-room when I heard bell ring; I went forward and saw "Pennsylvania;" she was heading right for the "Prince-
271 ton;" then she was about 500 yards off; I came aft, and I had not been there long before the "Pennsylvania" was alongside of the tow; I was aft when I saw her come along; she passed within 15 or 20 feet of tow on port side; saw her strike afterbox of chunker outside chunker, and carry it away; the "Pennsylvania" went about ¼ mile; after I first saw "Pennsylvania," can't say if I heard any signals from tug; can't give idea as to speed of "Pennsylvania; clear morning; could see all about.

Cross-examined:

First I heard was bells to stop and back; I was coming up, or was on main deck, when I heard bells; I went right to forward deck and saw "Pennsylvania; it was 60 feet to there; then I went aft; about a minute after I got there "Pennsylvania" came by in time after I got back that would take me to walk 120 feet; when I got aft, "Princeton" was backing; I heard bells to stop backing; shortly after I got aft stopped backing, about time "Pennsylvania" got alongside of our spur boat.

WILLIAM BASSETT sworn: Lock-keeper on Delaware Canal; was commander of one of boats at collision—boat 781 in third tier on port side; inside boat of the three on port side; middle boat was Solliday's; outside was Gray's; I turned out at 6 a. m., between 5 and 6, just few minutes before collision; when I turned out, tow was opposite Courtlandt street, I think, or little above or below; tow near middle of river, little nearest New York shore, heading straight up river; did not notice tide; water smooth; could see far, from shore to shore plainly; it was clear; first was; I was in cabin; heard loud talking; came up; saw "Pennsylvania;" her bow was just abreast of bow of "Princeton" on Jersey side, 25 or 30 feet from tow to west; at that time could not tell if tow stopped or not; I saw collision; we were going straight up river, and "Pensylvania" came in oblique and struck outside chunker, just about six
feet from hinges; it cut her right in two, and carried after-
272 part right along with her, quite a distance; middle boat loaded deeper than my boat; had ship timber; I don't recollect hearing whistles; heard bell; "Pennsylvania" struck on Jersey side of chunker—larboard side; when I first saw "Pennsylvania" my boat was heading up river; chunker that was struck was heading up river at time.

Cross-examined:

Clear morning; perfectly smooth water; most calm morning I ever came across bay; before I came on deck I felt no jar of any kind on my boat; first I heard was loud talking; I did not get out on deck till after struck; stood on step of stairs; after I heard talking I heard a bell; can't say how many; was small bell or gong; Solliday's was middle boat.

NATHAN SOLLIDAY sworn: Was on one of boats at collision—master of 739—middle one of three in last tier on port side; number of boat outside of me was 605; I was in cabin in bed; heard crash.

WILLIAM BASSETT recalled: "Pennsylvania" cut through after-box; coal in it spilled out; part of after-box remained fastened to hinges.

JOHN M. WEEKS sworn: Steamboat inspector; these are the rules prescribed by the board of supervising inspectors, Oct. 17, 1857:

Rules 1, 3, 6th situation.

Ownership of all libellants admitted, and letters of administration of Mr. Gray, and demand on Hurst.

Defence.

Deposition of David M. T. Powell.
" Patrick Killing.
" John Ferber.
" Robert Evans.
" Henry Murphy.

Mr. Donohue, for claimants.
Mr. Goepp, for libellants.

273 UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

Be it remembered, that on the 21st day of January, in the year of our Lord one thousand eight hundred and sixty ——, I, Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1879, did call and cause to be and personally appear before me, at my office, at 74 Wall street, in the city of New York, in the

said southern district of New York, in the State aforesaid, David M. T. Powell, to testify, and the truth to say, on the part and behalf of the claimants of the steamship "Pennsylvania," in a certain suit or matter of controversy, now pending and undetermined, in the district court of the United States for the southern district of New York, wherein Nathan Solliday is libellant, against the steamship "Pennsylvania," her engines, &c., and wherein the Lehigh Coal and Navigation Company and Rebecca Gray, admx., &c., are libellants, against the steamship "Pennsylvania," her engines, &c., and wherein William Bassett is libellant, against the steamship "Pennsylvania," her engines, &c., and wherein Edward L. Morris and Benjamin F. Ely are libellants, against the steamship "Pennsylvania," her engines, &c., and wherein Seth Caldwell, Jr., Nathaniel P. Gordon,
274 Frank A. Hall, and Samuel B. Young are libellants, against the steamship "Pennsylvania," her engines, &c.

And the said David M. T. Powell, being about the age of twenty-four years, and having been by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said David M. T. Powell, and he did thereupon depose, testify, and say as follows, viz:

I was fourth officer on the "Pennsylvania" at the time of the collision, and was standing at the con; my office was to pass the word to the second officer; after we got out into the stream and straightened down I received an order to port; I passed it to second officer, and saw that the men were putting the helm to port; I got this order from the officer on the bridge; I then got an order to steady, then to port, and then hard-a-port. Before the second order to port was given I saw the tow; I saw by the compass at the con, they bore about two points off our port bow; we had a pilot on board; I don't recollect his name; the pilot and captain *was* both on the bridge; Captain Lewis is dead; I believe the order was passed to "mind your port helm."

Cross-examined:

The "Pennsylvania" is 2,388 tonnage; it will take her about a quarter of an hour to stop if she is under full headway, without backing; by backing you can stop her in five minutes; she is a screw propeller.

DAVID M. T. POWELL.

PATRICK KILLING, being about the age of thirty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Patrick Killing, and he did thereupon depose, testify, and say as follows, viz:
275 I am a seaman, and expect to go on a voyage to sea in the steamship "Pennsylvania," to-morrow; I was on board of the "Pennsylvania" at the time of the collision with the coal barges, some time in September and October last; we started from New York that morning at five bells, at about six or seven o'clock, as

near as I recollect; after we got straightened down we got order to port helm; we started from Pier 47, foot of Houston street; I was at the wheel at the time; Robert Evans was with me at the time; I ported the helm; I got no other orders except to port helm, and and then to hard-a-port; our engine stopped; we can tell as we stand right over it; I can't say if it backed; when I looked out it was backing; I noticed by the water; I saw the steamer and the lighters or barges; the barges were two points on our port bow.

Cross-examined by Mr. RIDGWAY:

I did not take notice of the time when we left the dock, but it was about six o'clock—day was just breaking—it was light enough to distinguish plainly from shore to shore; if I remember, the morning was pretty clear; I can't say how far our steamer had gone before my attention was drawn to the tug and barges; I can't say how long it was after we left the dock; but it wasn't many minutes; it might be a quarter of an hour; my time was taken up with my own duty, and I did not take notice of the time; I don't know how fast the "Pennsylvania" was going; I was inside the wheel-house, and remained there until after the collision took place; I did not leave the wheel-house until after the ship was out of port; the floor of the wheel-house is flush with the poop; I stood on a grating about three inches high; from where I stood I could see the tug and barges on the port side; I saw the tug and barges after the order to port, not before; my attention was on the compass that I was steering by, at the time this order to port was given; there was no other order given, and while I was porting the order came to hard-a-port; I can't say how far the tug and barges were ahead of us at the time I got the order to port;
276 I continued with helm hard-a-port until after the collision; it was some time after the order to port before the collision took place; I can't say how long; that is as near as I can say; I don't know that the engine backed until I looked back and saw it after the collision; my attention was drawn to my own work; I did not see the vessels as they came together; our bow was so high, it would hide the view; I know nothing of the carrying of a barge on the bow of the steamer for some distance after the collision; we got our orders from the second mate, who had charge of the wheel-house.

Cross-examined by Mr. BOWMAN:

The second mate was at the window of the wheel-house on the port side at the time; we had a pilot aboard; he was on the bridge, that is forward of the funnel, between the main-mast and fore-mast, and our wheel-house is abaft of the mizzen-mast; there was four men at the wheel; Evans and myself are the only ones here; in going in and out of port, we are accustomed to receive orders from the officer of the deck, and not from the pilot; the officer of the deck receives orders from the pilot on the bridge.

PATRICK KILLING.

And the said JOHN FERBER, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matters of controversy aforesaid, I did carefully examine the said John Ferber, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man, and expect to go to sea to-morrow; I am second engineer on the "Pennsylvania;" I did not feel or see the collision at the time; I was standing by the engine, in charge of it; I got orders by telegraph from the bridge; after the vessel was going at full speed the order came to stop; we stopped; we have to shut the steam off, and shut the slide valves in order to stop; the
277 telegraph moved to half speed astern, and barely stopped at that, and went to full speed astern; I obeyed these orders; I could not have put her at full speed astern quicker than I did; I can't state exactly how long we continued to back.

Cross-examined by Mr. RIDGWAY:

The speed varied from the time we left the dock to the collision; the greatest was forty revolutions a minute; the vessel wouldn't have her way on her at the time; I can't say how fast we were going through the water; if the vessel was under full headway after she had got her way on, with these revolutions she would be going at the rate of 8½ knots.

JOHN FERBER.

And the said ROBERT EVANS, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Robert Evans, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man, and bound on a voyage to sea in the steamship "Pennsylvania;" expect to leave to-morrow; I was on the starboard side of the wheel; it is called "starboard wheel;" after we got straightened down we got an order to "port the helm;" it was done; we then got an order to "hard-a-port," and did so; I felt the ship shake when she struck the boat; the propeller had stopped; at least I did not feel it jar; I didn't pay attention to whether it backed or not; I was attending to my duties; I did not see the collision; I was on the wrong side of the vessel to see it; our vessel had answered her helm; had swung better than two points.

Cross-examined by Mr. RIDGWAY:

It was about six o'clock and twenty minutes when we struck,
278 as far as I can judge; I didn't pay attention to the clock in the wheel-house at the time we started, nor at the time of the collision. It was not quite broad daylight; it was breaking day. You could see both sides of the river plainly, and the vessels going about the river. I can't say what speed she was going. I couldn't tell pretty near, from the motion of the screw under me. The collision was so violent that I could feel the ship shake when she struck

the boat. I saw nothing of the collision. I am not sure that up to the collision our engines had backed. The engine had stopped. I could feel that underneath where I stood. It was a little before the collision that the propeller had stopped—say two and a half minutes before. I know how long two minutes and a half are. I cant tell what excitement there was. I didn't notice the officers, but they were in a great way about the decks about running into the boat. I didn't feel the least excited. I did not time the stoppage of the engine by the clock.

Q. It was a mere guess, then?

A. Yes; there was no change made in the helm after the first order to port was given.

Redirect:

There was an order to port, and one to hard-a-port, and the ship answered her helm.

ROBERT EVANS.

And the said HENRY MURPHY, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Henry Murphy, and he did therenpon depose, testify, and say as follows, viz:

Am a seafaring man, and expect to leave on a voyage to sea in the steamship "Pennsylvania" to-morrow. I was second officer on board the "Pennsylvania" at the time of her collision with the tug and boats; Captain Lewis has been drowned since that col-
279 lision. I have been twenty-nine years at sea. I recollect the collision with the barges. I was stationed aft on the poop at the time, by the fore part of the wheel-house. I was there for the purpose of passing the pilot's orders to the person steering the ship. After the ship swung out into the river and got straight on her course I got an order to port helm. The ship answered her helm and swung off to the westward. Then came an order from the bridge to steady. The helm was steadied, but I don't think the ship had got off swinging to the westward. Afterwards Captain Lewis sung out from the bridge to mind the port helm, which means not to let the ship come back again. Then my attention was called to the tow, which was about three points, more or less, on our port bow. Directly, then, the order was given to port, and then hard-a-port. Those orders were obeyed.

Cross-examined by Mr. RIDGWAY:

I did not notice what the time was when we left the dock, but it was about six o'clock. It was about fifteen or twenty minutes after starting before the collision. Between the pier and the point of collision it was about half a mile, I think; not quite, perhaps. It was sufficiently clear for the safe navigation of the harbor. No doubt the machinery may have been going at full speed, but we had not been going long enough to get under full headway. The orders from

the bridge first drew my attention to the tow, because the order to "port the helm" showed that it was given because of something ahead. It was not said from the bridge that there was a tow ahead. As soon as the order to steady was given, and the vessel was swung off to the westward, I saw the tow. I can't state how long it was after the first order to port was given before I first saw the tow. I should judge three or four minutes. It was less than a minute after the order to steady was given until the order to port or hard-a-port was given, and these were preceded by the order to "mind your helm," and that would make it more than a minute between the orders to steady and the orders to "port" and "hard-a-port."

280 The orders were as follows: First "port;" second, "steady;" third, "mind your port helm;" fourth, "port;" and fifth, "hard-a-port." After the order "hard-a-port" she seemed to run scarce any distance. Her way seemed to be stopped. After said order it was about a minute before the collision occurred. I did not see the vessels strike. I saw the wreck, after the collision, passing by us, a slight flood carrying it by. It was the last of the flood in the stream, and a little ebb by the docks, going down.

HENRY MURPHY.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that the said witnesses were about to proceed on a voyage to sea and beyond the jurisdiction of this court.

I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the attorneys for the respective parties to be present at the taking of the depositions, and to put interrogatories, if he or they might think fit.

281 I further certify that on the 21st day of January, in the year of our Lord one thousand eight hundred and sixty-eight, I was attended by the attorneys for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were, by my duly sworn clerk, in my presence, by consent of the respective counsel, reduced to writing in

the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of transmitting the same with my hand to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 22d day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second.

[SEAL.] CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) United States district court for the southern district of New York. William Bassett and others *vs.* Steamship Pennsylvania. *De bene esse* depositions on the part of the claimants of the steamship Pennsylvania, taken before me, this 21st day of January, 1868. Chas. W. Newton, U. S. commissioner.

282 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

NATHAN SOLLIDAY *et al.*
vs.
THE STEAMSHIP "PENNSYLVANIA," Her Tackle, &c. } 21–510.

This case, having been heard on the pleadings and proofs, and argued and submitted on brief and points by the advocates of the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

And it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of this court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) Vol. 21, No. 510. United States district court for the southern district of New York. Nathan Solliday *vs.* The
283 Steamship "Pennsylvania," her tackle, etc. Max Goepp, proctor for libellants. Final decree. Libel dismissed with costs. Filed the 26th day of April, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, Administratrix, etc., *vs.* THE STEAMSHIP "PENNSYLVANIA," Her Tackle &c. } 21–511.

This case having been heard on the pleadings and proof, and argued and submitted on brief and points, by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this action be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

And it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulation for libellants' costs pay
284 into the registry of the court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) Vol. 21, No. 511. United States district court for the southern district of N. Y. The Lehigh Coal and Navigation Company and Rebecca Gray, administratrix, *vs.* The Steamship "Pennsylvania," &c. Max Goepp, proctor for libellants. Final decree. Libel dismissed with costs. Filed the 26th day of April, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 26th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

WILLIAM BASSETT *et al.* *vs.* THE STEAMSHIP PENNSYLVANIA, Her Tackle, &c. } 21–512.

This case having been heard on the pleading and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

285 And it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of this court the amount of their stipulations,

and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) Vol. 21, No. 512. United States district court for the southern district of New York. William Bassett *et al. vs.* The Steamship "Pennsylvania," &c. Max Goepp, proctor for libellants. Final decree. Libel dismissed with costs. Filed the 26th day of April, 1869.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

EDWARD L. MORRIS and BENJAMIN F. ELY
vs.
THE STEAMSHIP "PENNSYLVANIA," Her Tackle, etc. } 21–528.

This case having been heard on the pleadings and proofs,
286 and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed with costs, to be taxed against the libellants.

And it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of this court the amount of their stipulation, and that the clerk destribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) Vol. 21, No. 512. United States district court for the southern district of New York. Edward L. Morris *et al. vs.* The Steamship "Pennsylvania." F. C. Powman, proctor for libelants. Final decree. Libel dismissed with costs. Filed the 26th day of April, 1869.

287 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The Honorable Samuel Blatchford, district judge.

SETH CALDWELL, Jr., *et al.*
vs.
THE STEAMSHIP "PENNSYLVANIA," her Tackle, &c. } 21–547.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the

respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this action be, and the same is hereby, dismissed, with costs to be taxed against the libellants.

And it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for libellants' costs pay into the registry of this court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) Vol. 21, No. 547. United States district court for the southern district of N. Y. Seth Caldwell, Jr., *et al. vs.* The
288 Steamship "Pennsylvania," her tackle, &c. Post and Bissel, proctors for libellants. Final decree. Libel dismissed with costs. Filed the 26th day of April, 1869.

District Court of the United States for the Southern District of New York.

THE LEHIGH COAL AND NAVIGATION CO., AND NATHAN SOLLIDAY
ag'st
THE STEAMSHIP "PENNSYLNANIA."

SIRS: The libellants intend to appeal from the final decree of the court in this cause to the next term of United States circuit court.

Dated May 6th, 1869.

MAX GOEPP,
Proctor for Libellants.

To GEORGE F. BETTS, Esq., *Clerk.*
JOHN CHETWOOD, Esq.,
Proctor for Claimants.

(Endorsed:) District court of the United States for the southern district of New York. No. 21–510. The Leigh Coal and Navigation Company and Nathan Solliday *vs.* The steamship "Pennsylvania," etc. Notice of appeal. Max Goepp, proctor for libellants. Filed May 14th, 1869.

289 District Court of the United States for the Southern District of New York.

THE LEHIGH COAL AND NAVIGATION COMPANY & REBECCA GRAY, Adm'x., etc., of WILSON W. GRAY, deceased,
ag'st
THE STEAMSHIP "PENNSYLVANIA."

SIRS: The libellants intend to appeal from the final decree of the court in this cause to the next term of the U. S. circuit court.

Dated May 6th, 1869.

MAX GOEPP,
Proctor for Libellants.

To GEORGE F. BETTS, *Clerk.*
JOHN CHETWOOD, Esq.,
Proctor for Cl'm'ts.

(Endorsed:) District court of the United States for the southern district of New York. 21–511. The Lehigh Coal and Navigation Company and Rebecca Gray, Adm'x., etc., of Wilson W. Gray, deceased, *against* the steamship "Pennsylvania," etc. Notice of Appeal. Max Goepp, proctor for libellants. Filed May 14th, 1869.

290 District court of the United States for the southern district of New York.

THE LEHIGH COAL AND NAVIGATION COMPANY and WILLIAM BASSETT
ag'st
THE STEAMSHIP "PENNSYLVANIA," &c.

SIRS: The libellants intend to appeal from the final decree of the court in this cause to the next term of the U. S. circuit court.
Dated May 6, 1869.

MAX GOEPP,
Proctor for Libellants.

To GEORGE F. BETTS, Esq, *Clerk.*
JOHN CHETWOOD, Esq., *Proctor for Claimants.*

(Endorsed:) District court of the United States for the southern district of New York. 21–512. The Lehigh Coal and Navigation Company and Wm. Bassett ag'st The Steamship "Pennsylvania," &c. Notice of Appeal. Max Goepp, proctor for libellants. Filed May 14th, 1869.

291 U. S. District Court.

EDWARD L. MORRIS and Another
ag'st
THE STEAMSHIP "PENNSYLVANIA," &c.

SIRS: Please take notice that we intend to appeal to the next term of the circuit court of the United States for the southern district of New York, from the final decree entered in the above cause on the 26th day of April, 1869.

F. C. BOWMAN,
Proctor for Libellants.

To JOHN CHETWOOD, *Proctor for Claimants.*
GEO. F. BETTS, *Clerk.*

(Endorsed:) In admiralty. U. S. dist. court. 21–528. Edward L. Morris and Another ag't The Steamship "Pennsylvania," &c. Notice of intention to appeal. F. C. Bowman, proctor for libellants. Due service admitted. John Chetwood, proctor for claimants. Filed May 27, 1869.

292 United States District Court for the Southern District of New York.

SETH CALDWELL, JR., and others.
against
THE STEAMSHIP "PENNSYLVANIA."

SIR: Please to take notice that we intend to appeal to the next term

of the circuit court of the United States for the southern district of New York from the final decree entered in the above cause on the 26th day of April, 1869.

POST & BISSELL,
Proctors for Libellants.

To JOHN CHETWOOD, Esq.,
Proctor for Claimants, and
GEO. F. BETTS, Esq., *Clerk.*

(Endorsed:) U. S. district court for the southern district of N. Y. Seth Caldwell, Jr., and others *ag'st* the Steamship "Pennsylvania." Notice of intention to appeal. Post & Bissell, proctors for libellants. To George F. Betts, Esq., clerk. Filed May 21, 1869.

293 *Bond for Costs on Appeal.*

Circuit Court of the U. S. of America for the Southern District of New York, in the Second Circuit.

THE LEHIGH COAL AND NAVIGATION COMPANY, NATHAN SOLLIDAY, Libellants and Appellants,
vs.
THE STEAMSHIP "PENNSYLVANIA" and the NATIONAL STEAMSHIP COMPANY, Claimants and Appellees.

Know all men by these presents, that we, William H. Tillinghast and John F. Wilson, are held and firmly bound unto the above-named the National Steamship Company, claimants and appellees, in the sum of two hundred and fifty dollars, to be paid to the said the National Steamship Company, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named libellants and appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the judgment and decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that
294 if the above-named libellants and appellants shall prosecute their said appeal, to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. H. TILLINGHAST. [L. S.]
JOHN F. WILSON, [L. S.]

Sealed, delivered, and taken and acknowledged, this 15th day of May, 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

William H. Tillinghast and John F. Wilson, being duly sworn, each deposes and says that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

WM. H. TILLINGHAST.
JOHN F. WILSON.

Sworn to, this 15th day of May, A. D. 1869, before me.
GEO. F. BETTS,
U. S. Commissioner.

(Endorsed:) Vol. 21, page 510. United States circuit court. The Lehigh Coal and Navigation Company and Nathan Sollitday, libellants and appellants, *vs.* the steamship "Pennsylvania" and The National Steamship Company, claimants and appellees. Bond for costs on appeal. Max Goepp, appellants' proctor. Filed this 15th day of May, 1869. Approved. John Chetwood, proctor for claimants.

295 *Bond for Costs on Appeal.*

Circuit Court of the U. S. of America for the Southern District of New York, in the Second Circuit.

THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, as Adm'x, etc., Libellants and Appellants,
vs.
THE STEAMSHIP "PENNSYLVANIA" and THE NATIONAL STEAMSHIP COMPANY, Claimants and Appellees.

Know all men by these presents, That we, William H. Tillinghast and John F. Wilson, are held and firmly bound unto the above-named The National Steamship Company, claimants and appellees, in the sum of two hundred and fifty dollars, to be paid to the said The National Steamship Company, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 15th day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named libellants and appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the judgment and decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York.

296 Now, therefore, the condition of this obligation is such, that if the above-named libellants and appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obliga-

tion shall be void; otherwise the same shall be and remain in full force and virtue.

WM. H. TILLINGHAST. [L. S.]
JNO. F. WILSON. [L. S.]

Sealed and delivered, and taken and acknowledged, this 15th day of May, 1869, before me.

GEORGE F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

William H. Tillinghast and John F. Wilson, being duly sworn, each deposes and says that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and libabilities.

WM. H. TILLINGHAST,
JOHN F. WILSON.

Sworn to this 15th day of May, A. D. 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

(Endorsed:) Vol. 21, page 511. U. S. circuit court. The Lehigh Coal and Navigation Company, Rebecca Gray as adm'x, libellants and appellants, *vs.* The Steamship "Pennsylvania," and The National Steamship Company, claimants and appellees. Bond for costs on appeal. Max Goepp, proctor for appellants. Filed this 15th day of May, 1869. Approved. John Chetwood, proctor for claimants.

297 *Bond for Costs on Appeal.*

Circuit Court of the U. S. of America for the Southern District of New York, in the Second Circuit.

THE LEHIGH COAL AND NAVIGATION COMPANY AND WILLIAM BASSETT, Libellants and Appellants,
vs.
THE STEAMSHIP "PENNSYLVANIA" AND THE NATIONAL STEAMSHIP COMPANY, Claimants and Appellees.

Know all men by these presents, That we, William H. Tillinghast and John F. Wilson, are held and firmly bound unto the above, named The National Steamship Company, claimants and appellees in the sum of two hundred and fifty dollars, to be paid to the said The National Steamship Company, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named libellants and appellants have prose-

cuted an appeal to the circuit court of the United States, for the southern district of New York, in the second circuit, to reverse the judgment and decree rendered in the above-entitled suit, by
298 the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named libellants and appellants shall prosecute their said appeal to effect and answer all damages and costs, if they fail to make their said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. H. TILLINGHAST. [L. S.]
JNO. F. WILSON. [L. S.]

Sealed and delivered, and taken and acknowledged, this 15th day of May, 1869, before me,

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Wm. H. Tillinghast and John F. Wilson, being duly sworn, each deposes and says, that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. H. TILLINGHAST.
JNO. F. WILSON.

Sworn to, this 15th day of May, A. D. 1869, before me,

GEO. F. BETTS,
U. S. Commissioner.

(Endorsed:) Vol. 21, page 512. U. S. circuit court. The Lehigh Coal and Navigation Company and William Bassett, libellants and appellants, *vs.* The Steamship "Pennsylvania," &c., and The National Steamship Company, claimants and appellees. Bond for costs on appeal to circuit court. Max Goepp, appellants' proctor. Filed this 15th day of May, 1869. John Chetwood, proctor for claimants.

299 *Bond for Costs on Appeal.*

Circuit Court of the U. S. of America for the Southern District of New York, in the Second District.

EDWARD L. MORRIS, *et al.*, Libellants Appellants,
vs.
THE STEAMSHIP "PENNSYLVANIA," and THE NATIONAL STEAMSHIP COMPANY, Claimants Appellees.

Know all men by these presents:

That we, Edward L. Morris, libellant and appellant, and Simon A. Lash, are held and firmly bound unto the above-named claimants and appellees, in the sum of two hundred and fifty dollars, to

be paid to the said claimants, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 24th day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas, the above-named libellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that
300 if the above-named libellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWARD L. MORRIS. [L. S.]
SIMON A. LASH. [L. S.]

Sealed and delivered, and taken and acknowledged, this 25th day of May, 1869, before me.

JOSEPH GUTMAN, JR.
U. S. Commissioner, S. D., N. Y.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Simon A. Lash, being duly sworn, doth depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

SIMON A. LASH.

Sworn to this 25th day of May, A. D. 1869, before me.
JOSEPH GUTMAN, JR.
U. S. Commissioner, S. D., N. Y.

(Endorsed:) Vol. 21, page 528. U. S. Circuit Court. Edward L. Morris, *et al.*, Libellants, Appellants, *vs.* The Steamship "Pennsylvania," &c., The National Steamship Company, Claimants Appellees. Bond for costs on appeal. F. C. Bowman, proctor for appellants. Filed this 27th day of May, 1869. Approved. John Chetwood, claimants' proctor.

Bond for Costs on Appeal.

301 Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

SETH CALDWELL, JR., NATHAN P. GORDON, FRANK A. HALL, and EMANUEL B. YOUNG, Libellants and Appellants,

vs.

The STEAMSHIP "PENNSYLVANIA" and THE NATIONAL STEAMSHIP COMPANY, Claimants and Appellants.

Know all men by these presents:

That we, Caldwell, Gordon & Co., by Samuel B. Young, attorney,

and H. D. Ward, are held and firmly bound unto the above-named claimants and appellees in the sum of two hundred and fifty dollars, to be paid to the said claimants, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas, the above-named libellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree ren-
302 dered in the above-entitled suit, by the judge of the district court of the United States, for the southern district of New York—

Now, therefore, the condition of this obligation is such that if the above-named libellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CALDWELL, GORDON & CO. [L. S.]
By SAMUEL B. YOUNG, *Attorney.*
H. D. WARD. [L. S.]

Sealed and delivered and taken and acknowledged, this 21st day of May, 1869, before me.

JOHN A. OSBORN,
U. S. Commissioner.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

H. D. Ward, being duly sworn, doth depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

H. D WARD.

Sworn to this 21st day of May, A. D. 1869, before me.
JOHN A. OSBORN,
U. S. Commissioner.

(Endorsed:) Vol. 21, page 547. U. S. circuit court. Seth Caldwell, Jr., and O'rs., libellants and appellants, *vs.* The Steamship "Pennsylvania," The National Steamship Company, claimants, appellees. Bond for costs on appeal. Post & Bissell, proctors for appellants. Filed this 21st day of May, 1869. Approved. John Chetwood, claimants' proctor.

303 Circuit Court of the United States, Southern District of New York.

THE LEHIGH COAL AND NAVIGATION COMPANY and NATHAN SOLLIDAY, Libellants and Appellants,
ag'st
THE STEAMSHIP "PENNSYLVANIA," &c., and THE NATIONAL STEAMSHIP COMPANY, Complainants and Respondents.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named appellants respectfully showeth: That on or about the 20th day of November, 1867, the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York against the said steamship "Pennsylvania," each claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said steamship might be condemned to pay the demands of said libellants and costs in said libel mentioned, which libel was afterwards amended.

That process issued out of said court having been served on said steamship, the said The National Steamship Company appeared and claimed the said ship, and did, on or about the 31st day of December, 1867, file their answer to the said libel in said district court, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and said answer may more fully appear.

304 That the said cause came on to be heard before the Honorable Samuel Blatchford, judge of the said district court, on or about the 17th, 18th, or 19th days of March, 1869, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge, having advised thereon on the 26th day of April, in the year 1869, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the said libel be dismissed, with costs.

And these libellants and appellants are advised, and insist, that the said decree is erroneous, inasmuch as the said libellants are entitled to recover against the said steamship and the said claimants the damages sustained by reason of the collision in the said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court to be held in the said district, and on the said appeal they intend only to have the said cause heard anew on the same pleadings and the same proofs, and they pray that the said decree, and every part thereof, may be reversed, with costs, and such other decree be thereupon made as to the said circuit court shall seem just, and that the said appellees or respondents be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed,

and such other decree thereon be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

MAX GOEPP,
Proctor for the Appellants.

(Endorsed:) 21–510. U. S. circuit court for the southern district of New York. The Lehigh Coal and Navigation Co. and Nathan
305 Solliday *ag'st* The "Pennsylvania," etc. Appeal from district court to circuit court. Max Goepp, proctor for app'l'ts. Due service of a copy of within appeal admitted. New York, May 15, 1869. John Chetwood, proct. for cl'ts. Filed May 15, 1869.

Circuit Court of the United States, Southern District of New York.

THE LEHIGH COAL AND NAVIGATION COMPANY, and REBECCA GRAY, as Adm'x, &c., Libellants and Appellants,

vs.

THE STEAMSHIP "PENNSYLVANIA," &c., and THE NATIONAL STEAMSHIP COMPANY, Claimants and Respondents.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully showeth: That on or about the 20th day of November, 1867, the above-named libellants exhibited their libel in the district *of* court of the United States, for the southern district of New York, against the said steamship "Pennsylvania," each claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said steamship might be condemned to pay the demands of said libellants and costs in said libel mentioned, which libel was afterwards amended.

306 That process issued out of said court having been served on said steamship, the said The National Steamship Company appeared and claimed the said ship, and did, on or about the 31st day of December, 1867, file their answer to the said libel in said district court, praying that the said libel be dismissed, with their costs in that behalf, as by reference to said libel and said answer may more fully appear.

That the said cause came on to be heard before the Honorable Samuel Blatchford, judge of the said district court, on or about the 17th, 18th, and 19th days of March, 1869, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon on the 26th day of April, in the year 1869, made a decree or sentence in said cause, whereby it was among other things sentenced and decreed that the said libel be dismissed with costs.

And these libellants and appellants are advised and insist that the said decree is erroneous, inasmuch as the said libellants were entitled to recover against the said steamship and the said claimants the libellants' damages sustained by reason of the collision in said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court, to be held in the said district, and on the said appeal they intend only to have the said cause heard anew on the same pleadings and the same proofs; and they pray that the said decree, and every part thereof, may be reversed, with costs, and such other decree be thereupon made as to the said circuit court shall seem just, and that the said appellees or respondents be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be re-
307 versed, and such other decree thereon may be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

MAX GOEPP,
Proctor for Libellants and Appellants.

(Endorsed:) 21–511. United States circuit court, southern district of New York. The Lehigh Coal and Navigation Company and Rebecca Gray, as administratrix, *vs.* The Steamship "Pennsylvania," &c. Appeal from district court to circuit court. Max Goepp, proctor for appellants. Due service of copy of within appeal admitted, N. Y., May 15, 1869. John Chetwood, proctor for claimants. Filed May 15, 1869.

Circuit Court of the United States, Southern District of New York.

THE LEHIGH COAL AND NAVIGATION COMPANY and WILLIAM BASSETT, Libellants and Appellants,

vs.

THE STEAMSHIP "PENNSYLVANIA," &c., and THE NATIONAL STEAMSHIP COMPANY, Claimants and Respondents.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named appellants respectfully
308 showeth: That on or about the 20th day of November, 1867, the above-named libellants exhibited their libel in the district *of* court of the United States for the southern district of New York, against the said steamship "Pennsylvania," each claiming over fifty dollars, praying, among other things, for the reason set forth in said libel, that the said steamship might be condemned to pay the demands of said libellants mentioned, which libel was afterwards amended.

That process issued out of said court having been served on said steamship, the said The National Steamship Company appeared and claimed the said ship, and did, on or about the 31st day of December, 1867, file their answer to the said libel in said district court, praying that the said libel be dismissed, with their costs in that behalf, as by reference to said libel and said answer may more fully appear.

That the said cause came on to be heard before the Honorable Samuel Blatchford, judge of the said district court, on or about the 17th, 18th, and 19th days of March, 1869, upon the deposition and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on the 26th day of April, in the 1869, made a decree or sentence in said cause whereby it was, among other things, sentenced and decreed that the said libel be dismissed with costs. And these libellants and appellants are advised and insist that the said decree is erroneous, inasmuch as the said libellants were entitled to recover against the said steamship and the said claimants the libellants' damages sustained by reason of the collision in the said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of said decree to the next circuit court to be held in the said district, and on the said appeal they intend only to have the said cause heard anew on the same pleadings and the same proofs; and they pray that the said decree, and every part thereof, may be reversed, with costs, and such other decree be thereupon made
309 as to the said circuit court shall seem just, and that the said appellees or respondents be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, and such other decree thereon be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

MAX GOEPP,
Proctor for the Appellants.

(Endorsed:) 21–512. U. S. circuit court, southern dist. of New York. The Lehigh Coal and Navigation Company and William Bassett *ag'st* The "Pennsylvania," &c. Appeal from district court to circuit court. Max Goepp, proctor for claimants. Due service of copy of within appeal admitted. N. Y., May 15, 1869. John Chetwood, proctor for claimant. Filed May 15, 1869.

U. S. Circuit Court for the Southern District of New York.

EDWARD L. MORRIS and BENJAMIN F. ELY
against
THE STEAMSHIP "PENNSYLVANIA," &C.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named appellants respectfully showeth:
That on or about the 20th day of November, 1867, the above-
310 named libellants exhibited their libel in the district court of the United States for the southern district of New York, against the said steamship "Pennsylvania," each claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel,

that the said steamship might be condemned to pay the demands of said libellants and costs in said libel mentioned.

That process issued out of said court having been served on said steamship, the said "National Steamship Company" appeared and claimed the said ship, and did on or about the 31st day of December, 1867, file their answer to said libel in said district court, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and said answer may more fully appear.

That the said cause came on to be heard before the Honorable Samuel Blatchford, judge of the said district court, on or about the 17th, 18th, and 19th days of March, 1869, upon the depositions and proofs adduced by the respective parties, and the said judge having advised thereon, on the 26th day of April, in the year 1869, made a decree or sentence in said cause whereby it was, among other things, sentenced and decreed that the said libel be dismissed with costs. And these libellants and appellants are advised and insist that the said decree is erroneous inasmuch as the said libellants were entitled to recover against the said steamship and the said claimants the libellants' damages sustained by reason of the collision in said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court to be held in the said district, and on the said appeal they intend to have said cause heard anew on the same pleading and the same proofs only, and they pray that the decree and every part thereof may be reversed with costs, and such other decree be thereupon made as to the said circuit court shall seem just, and that the said appellees or
311 respondents be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed and such other decree thereon be made as to the said circuit court shall seem just. And that the appellees may be condemned to pay to these appellants their costs and damages in the premises.

F. C. BOWMAN,
Proctor for Libellants.

To JOHN CHETWOOD, Esq.,
Proctor for Claimants, and
GEO. F. BETTS, ESQ., *Clerk*.

(Endorsed:) 21–528. U. S. circuit court, southern district New York. Edward L. Morris and another *against* The Steamship "Pennsylvania," &c. Appeal. Due service admitted and time to serve on clerk extended five days. May 22d. John Chetwood, proctor for claimants. Filed May 27, 1869.

312 United States Circuit Court for the Southern District of New York, Second Circuit.

SETH CALDWELL, JR., NATHANIEL P. GORDON, FRANK A. HALL and SAMUEL B. YOUNG

against

THE STEAMSHIP "PENNSYLVANIA."

To the honorable the circuit court of the United States for the southern district of New York in second circuit.

The appeal of the above-named appellants respectfully showeth, that on or about the 20th day of November, 1867, the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York, against the steamship "Pennsylvania," each claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said steamship might be condemned to pay the demands of said libellants and costs in said libel mentioned, which libel was afterwards amended.

That process issued out of said court having been served on said steamship, the "National Steamship Company" appeared and claimed the said ship, and did, on or about the 31st day of December, 1867, file their answer to the said libel in said district court, praying that the said libel be dismissed with their costs in that behalf, as by reference to the said libel and said answer may more fully appear.

313 That the said cause came on to be heard, before the Honorable Samuel Blatchford, judge of the said district court, on or about the 17th, 13th, and 19th days of March, 1869, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on the 26th day of April, in the year 1869, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the said libel be dismissed with costs.

And these libellants and appellants are advised and insist that the said decree is erroneous inasmuch as the said libellants were entitled to recover against the said steamship, the said claimants, the libellants' damages sustained by reason of the collision in said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court to be held in the said district, and on the said appeal they intend only to have the said cause heard anew, on the same pleadings and the same proofs, and they pray that the said decree, and every part thereof, may be reversed with costs, and such other decree be thereupon made as to the said circuit court shall seem just, and that the said appellees or respondents be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, and such other decree thereon be made as to said circuit court shall

seem just, and that the appellees may be condemned to pay to the appellants their cost and damages in the premises.

POST & BISSELL,
Proctors for Libellants.

To JOHN CHETWOOD, Esq.,
Proctor for Claimants, and
GEO. F. BETTS, Esq., *Clerk*.

314 (Endorsed:) 21-547. United States circuit court for the southern district of New York. Seth Caldwell, Jr., and others, against The Steamship "Pennsylvania," &c. Petition of appeal. Post and Bissell, proctors for libellants. Due service of a copy of the within appeal admitted, May 21st, 1869. John Chetwood, claimants' proctor. Filed May 21, 1869.

United States District Court.

THE LEHIGH COAL AND NAVIGATION COMPANY and REBECCA GRAY, Administratrix, &c., of Wilson W. Gray, Deceased,
vs.
THE STEAMSHIP "PENNSYLVANIA," her Tackle, &c.

WILLIAM BASSETT and THE LEHIGH COAL AND NAVIGATION CO.
vs.
THE SAME.

SETH CALDWELL, JR., and Others
vs.
THE SAME.

NATHAN SOLLIDAY and THE LEHIGH COAL AND NAVIGATION CO.
vs.
THE SAME.

315 EDWARD L. MORRIS and BENJAMIN S. ELY
vs.
THE SAME.

BLATCHFORD, *J.*:

These libels are filed to recover the damages caused by a collision which took place in the harbor of New York, in the Hudson river, off the foot of Cortlandt street, in the city of New York, on the morning of the 24th of October, 1867, just before sunrise, between the steamship "Pennsylvania," which had left her dock in said city, and was bound on a voyage to sea, and three tow-boats called "Chunkers," loaded with coal, and in tow of the steamer "Princeton." The "Princeton" was on her way up the Hudson river, having come from Amboy, New Jersey, with fourteen boats in tow, two being on each side of her, one directly behind each of those four, and six more in a third tier behind the second four, such six being arranged so that three of them were on the left in the second tier behind the two on the port side of the "Princeton," and three of them were on the right in the second tier behind the two on the

starboard side of the "Princeton," with an interval between the port three and the starboard three. These suits relate to the port three and their cargoes, which were damaged by the collision. The "Pennsylvania" struck the extreme port boat of such port three.

The case on the part of the libellants is, that the "Princeton" saw the "Pennsylvania" ahead, about 2,000 feet off, presenting to the "Princeton" the bluff of her starboard bow; that the "Princeton," when the "Pennsylvania" was at that distance off, blew two blasts of her steam-whistle as a signal to the "Pennsylvania" to pass to her own left, or between the "Princeton" and the New York shore; that the "Princeton" receiving no answer to her whistle,
316 and observing, when the "Pennsylvania" was about fifteen hundred feet distant, that the "Pennsylvania" had ported her helm, and was coming straight towards the "Princeton," so as to involve risk of collision, stopped and reversed her engine and did not alter her helm; that the checking of her headway caused the port three boats in her hindmost tier to spread out more to port, by means of the tide, which was flood, while she and her tow were being swept up the river by such tide; and that the "Pennsylvania" passed in safety to the westward of the two boats on the port side of the "Princeton," and of the boats in the first tier behind, but struck the port side of the extreme port boat of the hindmost tier.

The libellants claim, in the first place, that this case is to be governed by the regulations prescribed by article 14 of the steering and sailing rules prescribed by the act of April 29th, 1864 (13 U. S. Stat. at Large, 60); and that, as the two steamers were, when the "Princeton" first saw the "Pennsylvania" crossing, so as to involve risk of collision, and as the "Pennsylvania" then had the "Princeton" on her own starboard side, it was the duty of the "Pennsylvania" to keep out of the way of the "Princeton" and her tow.

The answer to this is that the two vessels were not crossing, so as to involve risk of collision, because it is expressly contended by the "Princeton" (and the fact is so) that if the "Pennsylvania" was in the position alleged by the "Princeton," directly ahead of the "Princeton" and 2,000 feet off, and presented the bluff of her starboard bow to the "Princeton," the two vessels, if both of them had kept in their respective courses, would have passed clear of each other. Besides, if it was the duty of the "Pennsylvania," by article 14, to keep out of the way of the "Princeton" and her tow, it was also the duty of the "Princeton," by article 18, to keep her course. I am satisfied that this collision happened entirely from the fault of the "Princeton" in stopping where she did, and suffering her boats to spread out by the force of the tide. That was gross negli-
317 gence. But for that the "Pennsylvania" would have passed the hindmost tier in safety, as she did the rest of the boats. The boats in tow are to be considered as boats under steam, because towed by and exclusively under the control of the tug. The "Princeton," in suffering the tows to spread out and change their course and lie, as Riley (one of the hands on the "Princeton" and one of the witnesses for the libellants) expressed it, right across the track, did not, in the sense of the statute, keep her course. She should, at

least, have refrained from this manœuvre with a flood tide, which she must have known would produce the very effect it did. She had no power, by whistling, to compel the "Pennsylvania" to pass to the eastward. Even if she was not obliged, in compliance with article 13, to put her helm to port when she saw that the "Pennsylvania" had ported, and was meeting her end on, so as to involve risk of collision, yet she had no right, in reliance on article 16, under the circumstances, to stop and reverse. By article 19, in construing the rules, due regard must be had to special circumstances which exist in any particular case, rendering a departure from any rules necessary, in order to avoid immediate danger; and by article 20 nothing in the rules is to exonerate a vessel from the consequences of the neglect of any precaution required by the ordinary practice of seamen, or by the special circumstances of the case. In this case an adherence to rule 16, by stopping and reversing on the part of the "Princeton," was sure to bring with it, in the flood tide, immediate danger, by spreading out the tow across the track of the "Pennsylvania;" and a departure from that rule was necessary to avoid such danger; and the collision was the plain consequence of the neglect by the "Princeton" of the precaution, which the special circumstances of the case and the ordinary practice of every intelligent seaman required, of not stopping and reversing when going with the tide, and thus suffering the boats in tow to spread out and get into the way of the "Pennsylvania."

I see no fault on the part of the "Pennsylvania." She slackened her speed, and stopped and reversed as soon as she
318 perceived, by the stoppage of the "Princeton" and the spreading out of her tow, that there was any risk of collision with any part of the tow. She could not have apprehended any such negligent action on the part of the "Princeton." The fact that she passed everything in safety except these three port tows, which were in the act of being spread out by the tide, through a stoppage by the "Princeton" (which could not have been anticipated), shows that the collision was wholly due to such action of the "Princeton." I think, on the evidence, that the "Pennsylvania" made the "Princeton" a little on the port bow of the "Pennsylvania," and that, from that moment, in accordance with article 13, the "Pennsylvania" put and kept her helm to port until the collision; and that she would have cleared the "Princeton" and the whole of her tow, if the "Princeton" had not negligently thrown her tow, in the manner already stated, across the track of the "Pennsylvania." When too late, the "Princeton" became aware of the danger in which she had involved her tow, and started ahead with a view to dragging the boats out of the way of the "Pennsylvania;" but there was no time to effect the object.

The libels must be dismissed with costs.

James Ridgway, Max Goepp, Julius Bissell, and Francis C. Bowman, for the libellants: John Chetwood and Charles Donohue, for the claimant.

I certify the foregoing to be a true copy of the decision rendered

by the Hon. Samuel Blatchford, U. S. district judge, in the within-entitled causes.

New York, Oct. 21, 1870.

GEO. F. BETTS, *Clerk.*

319 The pleadings, judgment, and order of the general term affirming the judgment in the action in the New York supreme court, between Asa F. Miller, plaintiff, and The National Steamship Company, defendant.

Summons for Relief.

N. Y. Supreme Court.

ASA F. MILLER, Plaintiff,
ag'st
THE NATIONAL STEAMSHIP COMPANY, Defendant.

To the defendant, The National Steamship Co.:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, 158 Broadway, within twenty days after the service
320 hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated January 29, 1870.

EDWARD L. ANDREWS,
Plaintiff's Att'y, 158 Broadway.

321 N. Y. Supreme Court.

ASA F. MILLER
against
THE NATIONAL STEAMSHIP COMPANY.

The plaintiff, complaining of the defendant, alleges:

That on the 23d day of June, 1868, at the city of New York, in the superior court, in and for said city, one Rebecca Gray recovered a judgment against the National Steam Navigation Company, for the sum of three thousand two hundred and eighty-nine dollars and five cents, which was duly given by said court in an action wherein this plaintiff's assignor was plaintiff, and this defendant's assignor was defendant, and that on the 23d day of June, 1868, said judgment was docketed in the office of the clerk of said court.

That on the 23d day of June, 1868, an execution was issued in due form upon said judgment against the personal and real property of defendant's assignor to the sheriff of New York county, in which county the defendant's assignor has its main office and agency.

That the said execution has been duly returned by said sheriff wholly unsatisfied, and there is now due to the plaintiff on said

judgment $3,289.05 dollars, and interest from the 23d day of June, 1868.

That on the 11th day of December, 1869, the said Rebecca Gray, the plaintiff in the above described action, duly assigned to this plaintiff, for a valuable consideration, said judgment and all rights arising therefrom. That the defendant in the above described
322 action, The National Steam Navigation Company, was a corporation organized under the laws of Kingdom of Great Britain and Ireland, and a short time before the commencement of the action, in which said judgment was obtained, the said corporation was engaged in a very extensive shipping business between the port of New York, in the United States, and the port of Liverpool, in England, employing several large first-class steamers in the said traffic, and having a general agency with offices, and all the franchises and appurtenances pertaining to their business, in the city of New York.

That at the time of the accruing of the cause of action on which said judgment was obtained the defendant in said action was doing business in this city as above described, under the corporate name of The National Steam Navigation Company. That about the time of the recovery of said judgment and the issuing of said execution, the said National Steam Navigation Company suddenly assumed a new corporate name, in this jurisdiction, and became thereafter known as The National Steamship Company, the defendant in this action, and the sheriff of this county was, by such change of name, disabled from levying on the same property which had until said time stood in the name of the National Steam Navigation Company, the defendant in the original action. That said change of name was effected merely for the purpose of making an alteration in and curing a technical defect of the deed of settlement of the National Steam Navigation Company, the present company being incorporated under the limited liability act of the Kingdom of Great Britain and Ireland, by which statute the responsibility of shareholders is limited to the amount of their stock.

That on the occasion of said operation, the said National Steam Navigation Company handed over all their property to the National Steamship Company, which said property consisted of ships
323 and other valuable effects, property fully adequate to pay and satisfy this judgment.

That this defendant received the assets of the said judgment debtor, and remained under the same control and has never changed its identity, and said change of corporate name was fraudulently interposed in this jurisdiction, to prevent a levy under the above execution.

That this defendant has now ample assets of the National Steam Navigation Company, and as to said assets is merely the trustee for said National Steam Navigation Company and its creditors.

That said National Steam Navigation Company is not, and has not been for the space of about one year, within this State, and has no property within this State save and except the property stsnding in the name of this defendant. That this defendant has property

within this jurisdiction, belonging as above described to this judgment debtor, to wit, the steamship Helvetia and other valuable steamers, office fixtures, cash box, bank account, and other assets.

Wherefore the plaintiff demands judgment against the defendant:

I. That the defendant in this action be decreed to pay the said judgment.

II. That he be enjoined from selling, transferring or interfering with said property and equitable interests.

III. That a receiver be appointed of said property and equitable interests.

IV. And for such further relief as may be just.

EDWARD L. ANDREWS,
Plaintiff's Attorney, 158 *Broadway*.

324 CITY AND COUNTY OF NEW YORK, *ss:*

Asa F. Miller, being duly sworn, says: That he is the above-named plaintiff; that he has read the foregoing complaint, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters be believes the same to be true.

A. F. MILLER.

Sworn to before me, the 28th day of January, 1870.
JAS. J. THOMPSON,
Notary Public, N. Y. Co.

N. Y. Supreme Court.

ASA F. MILLER *ag'st* THE NATIONAL STEAMSHIP COMPANY.

CITY AND COUNTY OF NEW YORK, *ss:*

Asa F. Miller, being duly sworn, says: That the complaint in the foregoing complaint is true of his own knowledge; that there is imminent danger of the most valuable portion of the property formerly held by the National Steam Navigation Company, and now by the National Steamship Co., namely, the Helvetia and other steamships, being removed from this jurisdiction, to the detriment of the plaintiff.

ASA F. MILLER.

Sworn to before me, this 29th day of January, 1870.
JAMES J. THOMPSON,
Notary Public, N. Y. Co.

325 Supreme Court, City and County of New York.

ASA F. MILLER, Plaintiff,
ag'st
THE NATIONAL STEAMSHIP COMPANY, Defendants.

The defendants hereby answer the plaintiff's complaint.

They admit that on or about the 23d day of June, 1868, Rebecca

Gray, administratrix, &c., of Wilson W. Gray, deceased, recovered a judgment against the National Steam Navigation Company, in the superior court of the city of New York.

They admit that an execution issued upon said judgment to the sheriff of the county of New York, and that the same has been returned unsatisfied.

They admit that the National Steam Navigation Company was a corporation organized under the laws of the United Kingdoms of Great Britain and Ireland.

They allege that these defendants are a distinct and separate corporation, duly organized under the laws of the United Kingdoms of Great Britain and Ireland.

They admit the sale, transfer, and delivery by the National Steam Navigation Company, on the fifteenth day of August, 1867, to these defendants of their steamships and business.

326 They admit that the National Steam Navigation Company, up to said fifteenth day of August, 1867, carried on a large shipping business between New York and Liverpool, and employed several large first-class steamers.

They admit that the National Steam Navigation Company has no property within this State.

They deny generally and specifically each and every material allegation in plaintiff's complaint not herein expressly admitted, and pray that the same may be dismissed, with costs.

JOHN CHETWOOD,
Defendant's Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

Francis W. J. Hurst, being duly sworn, on his oath says: That he is the sole managing agent in the United States of the defendants; that the foregoing answer is true to deponent's knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. W. J. HURST.

Sworn to before me, this February 19, 1870.

ADAM GOS,
Notary Public, N. Y. Co.

327 Supreme Court, City and County of New York. Special Term, Sept. 1st, 1873.

ASA F. MILLER
against
THE NATIONAL STEAMSHIP COMPANY.

Present: Hon. John R. Brady, justice.

The above-entitled action having been brought on for trial before me, one of the justices of this court, at a special term thereof, held in the county court-house, in the city of New York, upon the pleadings and proofs, and on hearing Henry Morrison, of counsel for the

plaintiff, and John Chetwood, Esq., counsel for the defendant, opposed, in a motion to dismiss the complaint—

It is hereby ordered said complaint be dismissed, with costs to the defendant.

(A copy.) CHAS. E. LOWE, *Clerk.*

328 *Judgment.*

Supreme Court, City and County of New York.

ASA F. MILLER, Plaintiff,
ag'st
THE NATIONAL STEAMSHIP COMPANY.

This action having come on in its regular order on the calendar, on the 12th day of December, 1870, before the Hon. John T. Brady, one of the justices of this court, at a special term of this court, held at the county court-house, in the city of New York—

It was, on motion of John Chetwood, defendant's attorney, after hearing Henry Morrison, Esq., of counsel for plaintiff, ordered that the plaintiff's complaint be dismissed, with costs to the defendant.

And the defendant's costs having been duly adjusted at the sum of one hundred dollars & eighty-four cents; and the court having granted an allowance of one hundred dollars to the defendant herein, it is ordered, adjudged, and decreed that judgment be entered herein in favor of the said The National Steamship Company, the defendant, against Asa F. Miller, the plaintiff, for the sum of two hundred dollars & eighty-four cents, the amount of such costs and disbursements, and that they have execution therefor.

Entered Oct. 20, 1873.

329 At a general term of the supreme court of the State of New York, held at the county court-house, in the city of New York, on the 7th day of May, A. D. 1875.

Present: Hon. Noah Davis, chief justice; Charles Daniels, justice.

ASA F. MILLER, Appellant,
ag'st
THE NATIONAL STEAMSHIP COMPANY, Respondent.

The appeal from the judgment of the special term of the supreme court in above action having been brought on for argument at a general term of this court, held on the first Monday of March, A. D. 1875, after hearing Henry Morrison, Esq., of counsel for appellant, and John Chetwood, Esq., for the respondent, and due deliberation thereon having been had—

It is ordered that the judgment appealed from be, and the same is hereby, affirmed, with costs.

330 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New

York, on Wednesday, the nineteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Samuel Blatchford, circuit judge.

REBECCA GRAY, Adm'x, etc.,
[*vs.*]
THE NATIONAL STEAMSHIP COMPANY. } No. 95 on Equity Calendar.

The above-entitled cause coming on for final hearing upon pleadings and proofs—

Mr. Henry Morrison is heard in behalf of complainant.

(Further argument adjourned to the 20th inst.)

331 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit held at the United States court roms, in the city of New York, on Thursday, the twentieth day of Jannary, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Samuel Blatchford, circuit judge.

REBECCA GRAY, Adm'x, etc., *vs.* NATIONAL STEAMSHIP COMPANY.

The argument in the above cause being resumed—

Mr. Morrison concludes his argument in behalf of the complainant.

Mr. John Chetwood is heard in behalf of the defendant.

Curia advisari vult.

332 Circuit Court of the United States for the Southern District of New York.

REBECCA GRAY, Administratrix, &c., of Wilson W. Gray, Deceased.
vs
THE NATIONAL STEAMSHIP COMPANY.

Blatchford, *J.:*

On and before the 16th of August, 1867, the National Steam Navigation Company, Limited (and which will be called the Navigation Company), was a British corporation. On that day a written agreement was made between it, of the first part, William Rome and Charles Edward Dixon, of the second part, and The National Steamship Company, Limited, a British corporation (and which will be called the Steamship Company), of the third part. This agreement recites that on the 9th of July, 1867, the Navigation Company duly passed a resolution in conformity with "the Company's Act,
333 1862," to the effect that that company would be wound up voluntarily as and from the 15th of August, 1867, and that the said Rome and Dixon be appointed liquidators for that purpose, and that a new company called The Steamship Company, Limited, had been duly formed and registered, with a capital of £1,000,000, divided into 75,000 shares of £10 each, and 25,000 preferential shares

of £10 each, and that it was proposed to transfer to such new company the whole of the business and property of The Navigation Company in consideration of the allotting by the new company of 60,000 shares in it, credited with £10 per share paid, for the purpose of distribution among the members of the Navigation Company, or otherwise, for its benefit, and assuming all its liabilities, and also making provision for all matters which might arise in the
334 liquidation of the Navigation Company, and that the proposed transfer was thereby approved, and that an authority was thereby conferred on the liquidators to accept such 60,000 shares in the new company, each credited with £10 as paid up thereon, for the purpose of distribution among the members of, and for the benefit of, the Navigation Company.

The agreement also states that the Steamship Company had been incorporated under the provisions of the Companies act, 1862, with a memorandum and articles of association, extracts from which it sets forth. These extracts show that the name of the company is "The Steamship Company, Limited;" that the objects for which it is established are (among other things) the purchasing and taking over, for the sum of £600,000 in its paid up shares of £10 each, all the business, ships, or assets, subject to such liabilities
335 of the Navigation Company, and the sailing and managing of ships or vessels of iron or wood of every description; that its capital is £1,000,000, divided into 75,000 original shares of £10 each, and 25,000 preferential shares of £10 each; that it is established for the purpose of purchasing and taking over the business and assets of the navigation company, subject to the payment of all its existing liabilities, on the terms that there be allotted to each member of the Navigation Company in respect to every share held by such member in it 3 shares in the new company of £10, fully paid up, and that there be also offered to each such member in respect to each share so held by him a preferential share of £10, in respect to which the sum of 10 shillings shall be paid by him on the allotment and acceptance by him
336 of such preferential shares; that 60,000 of the original shares shall be offered at par as fully paid-up shares, so that 3 of them shall be offered to the holder of each share of £100, on which £30 has been paid up in the Navigation Company in exchange for each such share, and the remaining 15,000 original shares and 5,000 preferential shares shall be issued only under the circumstances thereinafter mentioned; that the directors shall first offer 20,000 of the preferential shares *pro rata* to such holders of shares in the Navigation Company as shall agree to exchange their shares into fully paid up shares in the new company, but in case any of the members of the Navigation Company shall decline to receive the same, or neglect to accept the same, the director shall issue such remaining shares, from time to time, to such persons as they
337 may think fit; that it shall be lawful for the directors to issue any portion of the remaining 15,000 original shares and 5,000 preferential shares, for the purpose of enabling them or the Navigation Company to carry out a specified contract, made April

18th, 1866, to which the Navigation Company was a party, if they shall deem it expedient so to do, provided that one preferential share be offered to each holder of 3 of the remaining 15,000 original shares; that certain specified dividends shall be made on the preferential shares, and the holders of them shall be entitled to certain specified rights, in case the company shall be wound up, and that no further calls shall be made in respect of the original £10 shares, but certain specified calls may be made as regards the preferential shares. The agreement also recites that the
338 assets and property of the navigation company consists of certain ships and other property, all of which are disclosed by its books, papers, and documents, which have been laid before the liquidators and the Steamship Company; that there are also certain liabilities of the Navigation Company, also disclosed by the same books, papers, and documents, as the same have been laid before the liquidators and the Steamship Company; and that by special resolution "The Steamship Company, Limited," has changed its name, and now is "The National Steamship Company, Limited." The agreement then provides as follows:

(1.) The Navigation Company and their liquidators will forthwith, by such means, deeds, acts, and assurances as may be necessary or expedient in that behalf, convey, deliver, and make over to
339 the Steamship Company all such real and personal property, capable of assignment and transfer, as are comprised in, or make up, or pertain to, the several items appearing under the heads of assets in the said books, papers, and documents, and which books, papers, and documents, it is agreed, shall be given up to the steamship company.

(2.) The Steamship Company shall take such property subject to the several rights and equities therein subsisting, and in particular to the discharge of the several liabilities appearing in the said books, papers, and documents, and to all other liabilities, if any, of the Navigation Company to which said property is now subject.

(3.) As to all such parts of said property as shall not be capable of assignment, the Navigation Company and the liquidators will stand seized and possessed of it in trust for the steamship
340 company, and to be dealt with as the Steamship Company may from time to time direct.

(4.) The property so agreed to be conveyed shall, subject to said debts and liabilities of the Navigation Company, and subject to the rights and equities affecting it, be held by the steamship company subject to the primary obligation of discharging all expenses connected with the dissolution and winding up of the Navigation Company and all other liabilities to be incurred by the liquidators as such, and all moneys necessary for the purchase of the interest of any dissentient member of the Navigation Company who shall be entitled to have his interest purchased under the Companies' act, 1862, and all moneys which the liquidators may pay in pursuance of any arrangement or compromise with any member of the Navigation Company, and subject to said payments, for the
341 benefit of the steamship company.

(5.) The Steamship Company will allot to the liquidators so many of its fully paid-up shares and preferential shares as will enable them to carry out the arrangement so proposed to the members of the Navigation Company.

(6.) The liquidators will allot said shares to the members of the Navigation Company whose names appeared on the register of that company on the 15th of August, 1867, willing to accept the same in the proportion of 3 shares of £10 each, fully paid up, and one preferential share of £10 in the Steamship Company for one share of £100 in the Navigation Company with £30 paid up.

(7.) The liquidators shall do all things necessary to pay for purchasing such interest of any dissentient member, and shall dispose of the shares in the Steamship Company to which the dis-
342 sentient member would, but for his dissent, be entitled.

(8.) The Steamship Company will pay the several liabilities disclosed in said books, papers, and documents, and all other debts, if any, of the Navigation Company, and will devote and apply the real and personal property so to be made over to them to that purpose.

(9.) The Steamship Company will save harmless and keep indemnified the liquidators from all liabilities in their capacity as such liquidators.

(10.) In case of dispute, the matter in differenceshall be settled by arbitration.

When this agreement was made the Navigation Company owned and was in possession of eight steamships, named the Queen, Denmark, England, Helvetia, Erin, Pennsylvania, Virginia, and Louisiana. On the 16th of August, 1867, after the making of the agreement, the liquidators delivered the said 8 steamships to
343 the Steamship Company. From that time forward the latter company dealt with said ships as its own property, and managed them, and received the freights, and entered them in its own name in clearances, and advertised them in its own name, and acted as owner of them. The Navigation Company ceased to do business on the 16th of August, 1867. The Steamship Company commenced business on that day, and opened a set of books, in which its transactions were entered. The whole of the officials of the Navigation Company became officials of the Steamship Company. There was at the time no formal written transfer or bill of sale of the vessels made, other than said written agreement. "The Steamship Company, Limited," was incorporated by that name under the Companies' act, 1862, on the 1st of July, 1867. With the sanction of a special resolution passed by it, and with the approval of the Board of Trade, its name was, under § 13
344 of the said act, changed, and it was thereafter called "The National Steamship Company, Limited," and its new name was entered on the register of joint stock companies accordingly by the registrar of joint stock companies, and he gave a certificate to the above effect on the 8th of August, 1867. On the 15th of April, 1869, the secretary of the National Steamship Company, Limited, addressed a letter, under the seal of that company, to the registrar of shipping

at the custom-house at Liverpool, requesting that the said 8 steamers, "at present registered in the name of The National Steam Navigation Company, Limited, be transferred to the National Steamship Company, Limited, the first-named company having been reconstituted under the latter name, and being in process of liquidation."

This application was accompanied by a certificate of the in-
345 corporation of the Steamship Company, Limited, and a certificate of such change of its name to the National Steamship Company, Limited. The application was submitted by the custom-house at Liverpool on the same day to the board of commissioners of customs, as an application that the 8 vessels then standing in the name of The National Steam Navigation Company, Limited, might be registered "under the title of 'The National Steamship Company, Limited,' as sanctioned by the annexed certificate of incorporation." On the 17th of April, 1869, the chief registrar of shipping signed a paper, in which he said:

"The evidence of change of name of the company being satisfactory, as shown by the enclosed certificate of incorporation, I submit that the several registers of the vessels may be noted as requested."

On the same day it was so ordered by the board of commissioners of customs. The records of the registry of
346 shipping in the custom-house at Liverpool do not show any document of record there making any change of ownership of any of the vessels from The National Steam Navigation Company, Limited. Those records show the following facts, among others, as to the registry in that office, of the vessels: The Virginia, the Denmark, and the Louisiana were conveyed to The National Steam Navigation Company by bills of sale, and were, therefore, registered in its name prior to 1869. The Pennsylvania, Erin, Helvetia, The Queen, and England were registered in the name of that company as original owners prior to 1869. In the record of the registry of each of the 8 vessels, the following entry appears: "Ownership altered to 'The National Steamship Company, Limited,' per board's order, dated 17th April, 1869, from 'The National Steam Navigation Company, Limited;'" and under the head of "Names of owners,"
347 the following: "The National Steamship Company, Limited, total, 19th April, 1869." On this alteration of ownership on the registry no new register, or certificate of registry, was taken out by or issued in respect of any one of the 8 ships, but the old registers issued to The National Steam Navigation Company, Limited, prior to 1869, remained outstanding, and were surrendered up and cancelled, one in 1870, two in 1871, four in 1872, and one in 1874; seventeen registers for seven of the vessels being taken in the name of The National Steamship Company, Limited, on alteration of tonnage, and three of the vessels, one of which was the Pennsylvania, being sold to foreigners. The Navigation Company was finally dissolved in November, 1870. On the 31st of October, 1867, the plaintiff in this suit commenced an action at law in the superior court of the city of New York against The National
348 Steam Navigation Company. The complaint in that suit alleged that the defendants in it "are a British corpora-

tion," "and at the times hereinafter mentioned, being such corporation, owned and sailed a line of ocean steamers between New York and Queenstown and Liverpool." The cause of action set forth was the death of the plaintiff's intestate, on the 24th of October, 1867, caused by a collision on that day in the harbor of New York, between a canal boat on which he was, and the steamship Pennsylvania, "belonging to the defendants," which occurred through the negligence of the steamship, her master and crew. The claim was for $5,000. The National Steam Navigation Company, as defendant in the suit, appeared by attorney, and answered the complaint. The answer admits that the defendants "were created" a British
349 corporation, and that a collision took place between the Pennsylvania and certain canal boats, and denies all the other matters stated in the complaint "severally and specifically." The answer was sworn to December 16th, 1867, by Francis W. J. Hurst, who makes oath "that he is the only managing agent in the United States of the defendants." The cause was tried before a jury May 12th, 1868, and resulted in a verdict of $3,000 for the plaintiff. On this verdict a judgment was entered June 23rd, 1868, in favor of the plaintiff against the National Steam Navigation Company for $3,289.05 damages, costs, and disbursements. That judgment has never been reversed or paid. On the 11th of December, 1869, the plaintiff assigned the judgment to Asa T. Miller. In January, 1870, Miller brought a suit in the supreme court of the State of New York against the defendant in this suit, the National Steamship Com-
350 pany. The complaint sets forth the recovery of the judgment, the issuing of an execution on it, the return of said execution wholly unsatisfied, and the assignment of the judgment to Miller; that the Navigation Company was a British corporation, and a short time before the bringing of the suit in which the judgment was recovered was engaged in a very extensive shipping business between New York and Liverpool, with steamers, and having a general agency with offices in the city of New York; that at the time of the accruing of the cause of action on which the judgment was obtained, the defendant in said action was doing business in New York under the corporate name of the National Steam Navigation Company; that about the time of the recovery of the judgment the Navigation Company suddenly assumed a new corporate name in this jurisdiction and
351 became thereafter known as The National Steamship Company, "the defendant in this action," and the sheriff was, by such change of name, disabled from levying on the same property which had until said time stood in the name of the Navigation Company; that said change of name was effected merely for the purpose of making an alteration in and curing a technical defect of the deed of settlement of the Navigation Company; that on the occasion of said operation, the Navigation Company handed over all their property to the Steamship Company, it being fully adequate to satisfy said judgment; that the Steamship Company received the assets of said judgment debtor, and remained under the same control and has never changed its identity, and said change of corporate name was fraudulently interposed in this jurisdiction, to prevent a levy under

352 said execution; that the Steamship Company has ample assets of the Navigation Company, and as to them is merely trustee for the Navigation Company and its creditors; that the latter company is not, and has not been for the space of about one year, within the State of New York, and has no property therein except the property standing in the name of the Steamship Company, and that the latter company has property within this jurisdiction belonging, as above described, to said judgment debtor. The prayer of the complaint is for judgment that the Steamship Company pay said judgment. That company appeared in said suit and answered to complaint. The answer admits the recovery of the judgment and the issuing and return of the execution. It admits that the Navigation Company was a British corporation. It alleges that the Steamship Company is a distinct and separate British corporation. It admits the sale, transfer, and delivery by the Navigation Com-
353 pany, on the 15th of August, 1867, to the Steamship Company of their steamships and business; that the Navigation Company up to that date carried on a large shipping business between New York and Liverpool with steamers, and that the Navigation Company has no property within the State of New York. It denies generally and specifically every material allegation in the complaint not expressly admitted in the answer. The answer was sworn to February 19th, 1870, by Francis W. J. Hurst, who makes oath "that he is the sole managing agent in the United States of the defendants." The suit brought by Miller was tried at special term, September 1st, 1873, and an order made in it that day states that the action was "brought on for trial" at a special term of the court "upon the proceedings and proofs," and that on hearing counsel "on a motion to dismiss the complaint, it is ordered that
354 the complainant be dismissed with costs to the defendant." The judgment thereon was entered October 20th, 1873, and states that the action came on in its regular order on the calendar, on December 12th, 1870; that after hearing counsel, it was ordered that the complaint be dismissed with costs to the defendant; and that the defendant have judgment against the plaintiff for $200.84 costs and disbursements. The plaintiff appealed to the general term, and the judgment was by it affirmed on the 7th of May, 1875. The case is reported in 4 Hun., 654. It is there stated, and it also appears by the bill of exceptions taken at the trial, that at the trial the plaintiff amended his complaint by striking out such matters as might be inconsistent with such an amendment, and by inserting instead thereof allegations that the Steamship Company and
355 the Navigation Company were separate and distinct corporations, and that the former accepted the latter's property with distinct agreement to pay the latter's debts; that the answer was then so amended as to deny those allegations generally; that the plaintiff put in evidence the judgment-roll of the judgment and proved the issuing of the execution and its return unsatisfied, and then gave evidence tending to show that the defendant in the action was incorporated July 1st, 1867, by the name of "The Steamship Company, Limited;" that on the 8th of August, 1867, its name was

changed to "The National Steamship Company, Limited;" that the Navigation Company, preparatory to a dissolution of that corporation, transferred all its property to two liquidators, under the provisions of the companies' act, 1862; that said liquidators transferred all of said property to the Steamship Company, on the 16th of August, 1867; that on that day the Navi-
356 gation Company ceased to do business, and commenced to wind up its affairs, and that such transfer was made substantially upon the agreement and condition that the Steamship Company should take such property subject to the rights and equities therein subsisting, and in particular to the discharge of the several liabilities appearing in the books, papers, and documents of the Navigation Company, and to all other liabilities of the last-named company, to which said property was then subject, and would pay in due course the several liabilities disclosed in said books, papers, and documents aforesaid, and all other debts, if any, of the Navigation Company, and would apply the property so to be made over to them for that purpose. The report then proceeds: "The general term was of opinion that, as the liability to the plaintiff's as-
357 signor for an injury which occurred to her intestate on the 24th of October, 1867, could not appear in the books, papers, and documents of the National Steam Navigation Company on the 16th of August preceding, nor be then a debt or liability of that company which was or could be assumed by the present defendant, and as, when the injury occurred, the National Steamship Company was the owner of the steamship Pennsylvania, engaged in its navigation, and the alleged wrongful act and negligence were its own and not those of the corporation which was sued, neither on sound law nor logic could it be held that by the agreement made on the transfer of the property defendant bound itself to pay its liabilities that might thereafter spring out of the wrongful acts and negligence of its own servants, nor did the agreement contemplate or provide for liabilities of that kind which might be asserted
358 by actions improperly brought against the company which had ceased to do business, and was existing only in the process of winding up its affairs, and that, therefore, the complaint was properly dismissed, and that the judgment should be affirmed, with costs." The bill of exceptions in the case shows that the said agreement of August 16, 1867, was put in evidence. On the 5th of May, 1876, an order was made by the supreme court of New York in the suit of Miller against the Steamship Company, which order, on the consent of the respective parties, discontinued the action without costs to either party. On the 7th of January, 1874, Miller assigned to Henry Morrison his interest in the suit he had brought and in the said judgment. On the 16th of February, 1877, Morrison assigned the judgment to the plaintiff in the suit. In Novem-
359 ber, 1867, the plaintiff in the suit filed a libel in admiralty *in rem* against the steamship Pennsylvania in the district court of the United States for the southern district of New York, alleging that her intestate and a certain corporation were the owners of a canal boat, which, on the 24th of October, 1867, was struck

and sunk in the harbor of New York by said steamship, through the negligence of the persons navigating her; that the canal boat became a total loss, and the said intestate was then and there drowned; that the said intestate's loss, by losing his part of the boat and property on board belonging to him, was $938.50, and that the administratrix was entitled to recover that amount, and the other libellant $600, against the steamship. The libel alleged that the libellants had applied to F. W. J. Hurst, agent of the National Steam Navigation Company, owners of said steamship the said owners being
360 "a British corporation," and requested him to settle with them for said damages; but he denied that there was any liability on the part of the said steamship for the said damages. On the 29th of November, 1867, the proctor for the administratrix signed a stipulation in the suit, providing that service of process of attachment against the vessel be waived, if the claimants would file a claim and bond the vessel, "the bond to be signed by F. W. J. Hurst, manager of the National Steamship Company, owners of the said steamship," and by a surety, and if the claimants would answer the libel by a day named. On the same day the National Steamship Company filed a claim to the vessel, in the suit, averring "that the company above named" (the National Steamship Company) "are the true and *bona fide* owners of the said steamship." This claim was sworn to on that day by F. W. J. Hurst, as
361 "manager of the National Steamship Company," to the effect that the claim was true of his knowledge. On the same day, "the National Steamship Company, by F. W. J. Hurst, manager," executed and filed a bond for value in the suit to the marshal, for the release of the vessel, and also a bond for costs. On the 31st of December, 1867, the National Steamship Company filed an answer to the libel, averring that "the claimants are and were the true and only owners of the said steamer Pennsylvania at the several times stated in the libel," and raising an issue as to the negligence alleged.

The case was tried in the district court on the merits, and on the 26th of April, 1869, the court dismissed the libel, with costs (3 Benedict, 215). On an appeal by the libellants to this court it made the same decree.

The facts hereinabove set forth are those which appear
362 from the proofs in this suit. This suit was commenced in the supreme court of New York by the service of a summons and a copy of a complaint on the 24th of February, 1877. On the petition of the defendant the suit was removed into this court, an order of removal having been filed in the State court September 10th, 1877. The record on removal was filed in this court October 15th, 1877. Pursuant to an order of this court, made June 11th, 1878, the plaintiff filed in this court a bill in equity herein. The bill sets forth the agreement of August 16th, 1867; the recovery of the judgment for $3,289.05; the various assignments of it; and the issuing of the execution and its return unsatisfied on the 25th of August, 1868. It avers that thereafter the Navigation Company transferred certain property belonging to it to the Steamship
363 Company, in fraud of the right of the plaintiff to have said

judgment paid; that the Navigation Company, when the cause of action on which the judgment was obtained accrued, and when the judgment was recovered, and when the execution was issued and returned, owned the said 8 steamships, and had not, at those times, made any change of ownership or sale whatever thereof, by bill of sale, according to the laws of Great Britain, and had not otherwise then made any lawful change of ownership or sale of any of them; that the Navigation Company, from on or about August 16th, 1867, was engaged in winding up under the companies' act of 1862; that its winding up was terminated July 12th, 1870; that the dismissal of the complaint in the suit by Miller was without finding any facts or conclusions of law; that the order of discontinuance was entered therein; that the defendant in this suit is a corporation
364 existing under the companies' act of 1862; that the general manager, the secretary and treasurer, the chairman of the board of directors, and the same individuals as directors of the Navigation Company, became, on the formation of the defendant, the officers and the identical officials of it; that it has not paid said judgment and has kept possession of said property in fraud of the plaintiff's right to have said judgment paid pursuant to the provisions of said agreement, and otherwise in disregard of the plaintiff's rights; that the Navigation Company has no property but that embraced in said transfer thereof by it to the defendant, and that unless said property and the proceeds thereof can be reached and applied to the payment of said judgment, it will remain unpaid.

The bill prays for a sale of so much of said property as may
365 be necessary to pay said judgment, and for such further or different relief as may be meet. The answer sets up that on the 16th of August, 1867, the Navigation Company sold and delivered to the defendant all its property for a full consideration paid by the defendant; and that, at that time, the defendant became the owner of all said property, including said 8 steamships, and has ever since owned them, but has rebuilt the Pennsylvania and two of the others, and changed their names. It denies that the transfer was in fraud of the plaintiff's rights. It avers that before the said judgment was recovered the Navigation Company had sold and delivered to the defendant, by good and sufficient instruments, all the said steamships, and ceased to own either of them, and the defendant became the sole owner of each of them; that in
366 the Miller suit the merits were tried; that by the judgments therein the cause of action set forth in the bill herein was finally and absolutely diposed of, and is *res adjudicata* as between the plaintiff and the defendant; that the said order of discontinuance in no way affects the finality of said judgments; that the plaintiff has no right to have her original judgment paid by the defendant, or out of any property sold or delivered to it by the Navigation Company; that the collision set up as the cause of action in the suit in admiralty was the identical collision set forth in the complaint in the suit in the superior court as the foundation thereof; that the defendant, as owner of the Pennsylvania, appeared and claimed, and bonded and answered in the suit

in admiralty, and had a decree in its favor, after a trial on the merits, and a like decree in this court on appeal, and that said decree still stands.

367 The bill in this suit proceeds upon the allegation and the ground that after August 25th, 1868, the property of the Navigation Company was transferred to the defendant, and that when the execution was returned on August 25th, 1868, the Navigation Company owned the 8 ships, because no change of ownership or sale of them had been before that made by bill of sale according to the British law, or otherwise lawfully. The only transfer shown is the transfer by delivery on the 16th of August, 1867, and the instrument of that date. The bill does not allege that no transfer was ever made, but that a transfer was made after the execution was returned. The transaction thus alluded to in the bill as a transfer can, according to the proofs, mean only the alteration of the registered ownership of the vessels in April, 1869. The instru-

368 ment of sale and delivery, referred to in the answer as made before the judgment was recovered, must mean the instrument of August 16th, 1867. The Miller suit was tried on the averment, in the amended complaint therein, that the two companies were distinct corporations, and that the Steamship Company accepted the property of the Navigation Company with a distinct agreement to pay its debts, and that the property was handed over about the time the execution was issued. The questions arise, therefore, whether the change of registry was the first transfer of title to the ships, as between the two companies and as respects the plaintiff, or whether the execution of the instrument of August 16th, 1867, and the delivery of the ships thereunder, was such a transfer of title.

It is plain that the companies were two distinct corporations. The bill does not allege otherwise; there was no change of

369 the name of the Navigation Company to the name of the Steamship Company. The instrument of August 16th, 1867, shows there were two corporations, and so does all the evidence, and so does the bill. The consideration in that instrument for the sale of the property was a good and valid one, and the subsequent dealing of the grantee with the property, unquestioned, must be accepted as evidence that the Steamship Company performed its covenants as to its shares to be issued to the shareholders in the Navigation Company, and thus paid the consideration. When paid, it related back to the delivery of the property, which was August 16th, 1867. The title of the Steamship Company to the ships became an equitable title to them as of that date, so far as any cause of action growing out of said collision is concerned. What other title, by bill of sale or otherwise, the Steamship Company might have

370 found necessary, in suits brought by it, or to protect themselves against a subsequent *bona fide* purchaser of the ships without actual notice, or notice by a change of name on the registry is of no importance in this suit. The old English statutory rule, that no transfer of a ship was valid or effectual for any purpose in law or equity, unless said transfer was by bill of sale containing a

recital of the certificate of registration has been abolished, and by § 3 of the act of July 29th, 1862, (25 and 26 Vict., ch. 63), it was provided that with certain exceptions, not important to this case, equities might be enforced against owners of ships in respect of their interest therein in the same manner as equities might be enforced against them in respect of any other personal property. The instrument of August 16th, 1867, accompanied by a delivery of the ships, was a sufficient transfer of the title of the ships as respected the cause
371 of action growing out of the collision, to have sustained against the Steamship Company the suit *in personam*, which was brought against the Navigation Company. It was sufficient to warrant the steamship company in asserting in its claim in the suit in admiralty, filed November 29th, 1867, that it was then the owner of the Pennsylvania, and in asserting in its answer in the suit in admiralty, December 31st, 1867, that it was the owner of the Pennsylvania when the collision occurred on October 24th, 1867. It thereby gave full notice to the plaintiff of its ownership of the vessel at the time of the collision. This notice was notice that the Navigation Company was not the owner of the vessel at the time of the collision. The complaint in the suit in the superior court, verified October 30th, 1867, had alleged that the Pennsylvania belonged to the Navigation Company at the time of the collision. The
372 answer in that suit, verified December 16th, 1867, by its general denial, in connection with its simple admission that the Navigation Company was created a British corporation, was not only consistent with the claim in the admiralty suit before put in, but with the answer in the latter suit, afterwards put in. With these facts before it, that the Navigation Company was not claiming that it owned the vessel at the time of the collision, and that the Steamship Company was claiming that it owned the vessel at that time, and that the Steamship Company was not a party to the suit in the superior court, the plaintiff went on with that suit to judgment, thus making the suit not only in the language of the general term, in the Miller suit, one improperly brought against the Navigation Company after it "had ceased to do business and was existing
373 only in the process of winding up its affairs," but one persisted in, not by mistake, but after full record notice that another corporation and not the one sued, owned, at the time of the disaster, the vessel which caused it.

The plaintiff sued the navigation company in the superior court as having owned the vessel at the time of the collision. There was never in that suit any allegation as to any identity between the two companies, or any continuance of the one under the name of the other. The Miller suit, as tried, was tried on an allegation in the complaint, that the two companies were distinct corporations, and that the obligation of the second company to pay the plaintiff's judgment arose out of an agreement by it, which accompanied the transfer of the property alleged to have accrued about the time the execution was issued, to pay the debts and liabilities of the first
374 company. The bill in this case goes upon the view that there were two separate corporations, and a transfer of the property

by the one to the other after the return of the execution, and not at all upon the ground that the one became the other, or that there was any identity of the two, or any continuance of the one under the name of the other, although the officers and the officials of the one became those of the other when the latter was formed. The fact of the entry on the registry as to each ship, on the 19th of April, 1869, that the ownership of it had been altered to the Steamship Company from the Navigation Company by the board's order of April 17th, 1869, and that from the former date the former company was the registered owner has no bearing on the rights of the parties to this suit as respects the subject-matter of it. Whether the board had any right, under the facts before it, to authorize the new
375 registry, is immaterial. It seems quite probable from the papers that the thing was done by mistake. The secretary of the Steamship Company stated in his letter that the steamers were registered in the name of the Navigation Company, and that that company had been reconstituted under the name of the Steamship Company, and was in process of liquidation, and he requested that the steamers might be transferred to the Steamship Company. The meaning of the statement was, that by the reconstitution the steamers had become the property of the Steamship Company. This was a fact. The reconstitution was by the agreement of August 16th, 1867, and acts done under it, and thereby, and by the delivery over of the steamers, they had become the property of the new company. The request really was that the registry might be changed
376 from the name of the old company to the name of the new company. With this letter were presented the certificates of the incorporation of the new company and of its change of name. The agreement of August 16th, 1867, which really, in connection with the delivery of the steamers, amounted to a bill of sale of them, does not seem to have been presented, as it should have been. The letter from the custom-house at Liverpool to the board of commissioners of customs, submitting to them the above-named letter and the certificates, as an application that the vessels might be registered in the name of the Steamship Company, spoke of the application as being one "sanctioned by the annexed certificate of incorporation." No such thing was sanctioned by the certificates. What they would have sanctioned would have been a change of the registry from the name of "The Steamship Company, Limited," to the name of "The National Steamship Com-
377 pany, Limited," if the vessels had been registered in the name of the former company. The chief registrar seems to have regarded the application as one for such a change, for in the paper signed by him he says that "the evidence of change of name of the company being satisfactory, as shown by the enclosed certificate of incorporation," the registers may be noted as requested. The only evidence of change of name he had in the certificate submitted was a change from the first name of the new company to the second name of the new company, and his conclusion thereon that the request might be granted could only legitimately have been a conclusion that the vessels, being registered in such first name, might be

registered in such second name. He must have overlooked the fact that the vessels were registered in the name of the Navigation Company.

378 The matter having thus passed the routine, the order of the board was made by simply writing on the papers the word "Ordered," with the initials "T. F. F." The proper paper being then sent to the custom-house at Liverpool, and the thing ordered being that the registers might be noted as requested, and the request being that the registry might be transferred from the Navigation Company to the Steamship Company, this was done. But, as said before, whether this was a mistake, or done without authority, or done on insufficient evidence, is of no consequence here. It was not done on any papers showing any identity between the Navigation Company and the Steamship Company. The statement that the former company had been "reconstructed" under the name of the latter company was not accompanied by any evidence

379 as to how such reconstruction had taken place, and certainly not by any evidence that there had been merely a change of name, still leaving an indentity of corporate being. The instrument of August 16, 1867, if presented, would have shown the contrary. Even if, in order to justify the act of the board, it may be held to have acted on the assumption that the two companies were identical, that is of no importance to this case, because the registered title to the vessels is of no importance to this case. The companies were not in fact identical, and the true view of the transaction between them as affecting this case has been before defined. The defendant did not obtain the vessels by means of the registry, so far as any rights involved in this suit are concerned, and it is, therefore, not now asserting anything which it ought not equitably to assert.

380 Whether the plaintiff could have relief in the superior court by an application to make this defendant a party to the suit and the judgment, so as to be bound by it, and to make its property subject to an execution on the judgment, is a question not involved in this suit, and not before this court.

There is no provision in the instrument of August 16th, 1867, which makes the defendant liable to pay this judgment. It was not a liability of the Navigation Company on the 16th of August, 1867, nor is it founded on any liability which then existed or had accrued. It is not founded on any matter which arose in the liquidation of the Navigation Company. Under the terms of the winding-up resolution of July 9th, 1867, the winding up of that company commenced "as and from" the 15th of August, 1867. Under § 131 of the

381 Companies' Act, 1862 (25 & 26 Vict., ch. 89), a company voluntarily winding up is required, from the date of the commencement of such winding up, to cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, although its corporate state and all its corporate powers continue until its affairs are wound up. By § 133, the liquidators who were appointed by the resolution of July 9th, 1867, took the place of the directors, and all the power of the directors ceased after the 15th of August, 1867. Therefore, although the Navigation Company con-

tinued to be a corporation after August 15th, 1867, neither its directors nor any agent could after that date represent it by any act in any suit in respect of a cause of action which accrued after
382 that date, especially one arising after it had parted with all its property, including the vessel out of whose navigation the cause of action arose.

There was, therefore, no identity between the two companies for the purpose of the equitable satisfaction by the new company of the judgment against the old company. In respect to causes of action arising after August 15th, 1867, the defendant did not take the property as trustee for the old company, or for persons who might have such causes of action, but took it as its own, liable to respond itself in suits directly against itself and only in such suits for such causes of action. Identity of business and adoption of individual officers and officials and the use of the old property, and the action of Mr. Hurst in calling himself, on December 16th, 1867, the "only managing agent in the United States" of the Navigation Com-
383 pany, cannot vary the case. As has already appeared, the ownership of the vessels was not vested in the Navigation Company when the plaintiff's judgment was recovered, or when her cause of action accrued.

In the foregoing premises it is not true, as is contended by the plaintiff, that the judgment against the Navigation Company, though involving the question as to whether the Pennsylvania belonged to that company at the time of the collision, is *res adjudicata* as against the Steamship Company. The fact that the latter company was transferee of the Pennsylvania did not make it either a party or a privy to the suit or a trustee for the old company in respect of the cause of action, the suit being one *in personam*. The Steamship Company had no right to defend the suit or to control its proceedings. The Pennsylvania was not seized in the suit; when, after the judgment, its property
384 was sought to be taken on the execution, it interposed its claim of ownership. It had asserted its ownership of the Pennsylvania in the admiralty suit, as was necessary, because the suit was *in rem*. It was not a party to the *in personam* suit, and in that suit the Navigation Company had denied that the Pennsylvania was owned by that company. There was nothing in the *in personam* suit, before execution, which could affect the title of the Steamship Company to any of the property it had received. It had no interest in the result of the suit, and the facts that Mr. Hurst had notice of the suit, and that the same attorney who appeared for the claimant in the admiralty suit appeared for the defendant in the *in personam* suit are of no legal importance. The fact that Mr. Hurst or the attorney did not set forth specifically in the an-
385 swer in the *in personam* suit that the vessel was the property of the Steamship Company at the time of the collision cannot affect the defendant in this suit. Mr. Hurst denied in the answer that the veesel belonged to the Navigation Company at the time of the collision. In the suit in admiralty he had given the plaintiff full notice of record, 17 days before the answer in the *in personam* suit was put in, that the vessel belonged then to the Steamship Com-

pany, and 15 days after that answer was put in he gave her notice, of record in the suit in admiralty, that the Steamship Company owned the vessel at the time of the collision.

The view is presented by the plaintiff that § 133 of the Companies' Act, 1862, provides that "the liquidators shall pay the debts of the company;" that this debt became a debt of the company by
386 judgment before the final winding up in 1870, and this before the dissolution of the corporation, and that the property of the old company placed by the liquidators in the hands of the new company, must be regarded as held by it in trust to pay all debts which should become such against the old company before its final dissolution. The answer to this view is that this claim cannot be properly considered a debt of the old company to be paid by the liquidators, merely because the claim went into judgment against the old company. In view of all the facts there never was any cause of action against the old company, and the new company was not a party to and is not bound by the judgment. The plaintiff has no lien on, or claim against, or equity in respect of, any prop-
387 erty received by the defendant which she is entitled to enforce in this suit. There is nothing in the point that Rome and Dixon are not parties to this suit. No such objection is taken in the answer. It was previously taken by plea and overruled. It is very clear that they are not necessary or proper parties. The company has been wound up and dissolved, and their functions are ended. No relief is prayed in regard to them.

The defendant contends that the questions in this suit are *res adjudicata* between the parties by reason of the judgments in the Miller suit. The plaintiff, citing Harris *v.* Del., Lack. & W. R. R. Co., (61 N. Y., 656,) contends that the discontinuance of the suit after judgment destroyed the effect of the judgment. It is not necessary to pass on this point.

The proceedings in the admiralty suit cannot operate as
388 *res adjudicata*. They are not so pleaded. The cause of action was different from that in the *in personam* suit, and the judgment in the latter suit was recovered before the decree in the admiralty suit was entered.

I have carefully considered all the questions in this case, and the conclusion is that the bill must be dismissed, with costs.

Henry Morrison, for the plaintiff; John Chetwood, for the defendant.

(Endorsed:) Circuit court of the United States for the southern district of New York. Rebecca Gray, administratrix, &c., *vs.* The National Steamship Company.

(Further endorsed:) Decision. May 5th, 1881. U. S. circuit court. Filed May 5, 1881. Joseph M. Deuel, clerk.

389 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit,

at the post office building, in the city of New York, on the eighteenth day of June, 1881.

Present: Hon. Samuel Blatchford, circuit judge.

REBECCA GRAY, Adm'x, &c., Nelson Gray, Dec'd, Pl'ff,
ag'st
THE NATIONAL STEAMSHIP COMPANY, D'f'd't.

This cause having been heard upon the pleadings and proofs, and Mr. Morrison having been heard for the plaintiff and Mr. Chetwood for the defendant, and due consideration having been had, it
390 is hereby ordered, adjudged, and decreed that the plaintiff's bill be, and the same hereby is, dismissed, with costs to be taxed.

SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court, southern district New York. Rebecca Gray, adm'x, pl'ff, ag'st The National Steamship Co., def't. Final decree. John Chetwood, sol'r for def't's. U. S. circuit court. Filed June 18, 1881. Joseph M. Deuel, clerk.

391 U. S. Circuit Court, Southern District of New York.

REBECCA GRAY, Administratrix, &c., Complainant & Appellant,
vs.
THE NATIONAL STEAMSHIP COMPANY, Defendant & Appellee.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the Supreme Court of the United States, on the appeal to said Supreme Court in the above-entitled cause.

New York, May 17, 1882.

LAUTERBACH & SPINGARN,
Solicitors for Complainant.
JOHN CHETWOOD,
Sol'r Def't.

392 (Endorsed:) U. S. circuit court. Filed May 18th, 1882. Joseph M. Deuel, clerk.

393 United States Supreme Court.

REBECCA GRAY, Administratrix of the Goods, Chattels and Effects which were of Wilson W. Gray, deceased, Compl't & App'l't,
against
THE NATIONAL STEAMSHIP COMPANY, Defendant and Appellee.

To the Honorable the Supreme Court of the United States of America:

The petition of the appeal of Rebecca Gray, administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, the above-named complainant and appellant respectfully showeth:

That on or about the twelfth day of June, in the year one thou-

sand eight hundred and seventy-eight, the complainant and
394 appellant, as administratrix of all and singular the goods, chattels, and effects which were of Wilson W. Gray, deceased, filed her bill of complaint in the circuit court of the United States for the southern district of New York, in second circuit, against The National Steamship Company, a foreign corporation incorporated under and pursuant to the laws of the Kingdom of Great Britain and Ireland, for the relief set forth and claimed in the said bill of complaint, and among other things your complainant and appellant prayed that a receiver should be appointed of all the property and effects of The National Steam Navigation Company at the time of the assignments, transfer, and disposition of the property to the defendant as more particularly set forth in said bill of complaint.

That the defendant be adjudged to account for all the prop-
395 erty received by it under the assignment, transfer, and disposition aforesaid; and that the said receiver may be directed to sell the said property, or so much thereof as should be necessary to pay out of the proceeds of said property the judgment referred to and set forth in the said bill of complaint, the costs and expenses of this suit in the circuit court aforesaid and the balance to be held subject to the order of the said court.

That for further certainty in the premises your petitioner prays leave to refer to the said bill of complaint.

That upon the filing of said bill of complaint the complainant and appellant caused a subpœna to be issued out of and under the seal of the said circuit court requiring the said defendant to appear and answer the said bill of complaint, and which was
396 thereafter served upon the said defendant, which appeared in the said suit and filed its answer therein and issue was thereupon joined.

That such proceedings were thereupon afterwards had in and before said circuit court, that by the final judgment and decree of the said circuit court, entered upon the thirty-first day of October last past, the said bill of complaint was dismissed with costs which were duly taxed, as will appear in and by the said final decree, and to which this complainant and appellant craves leave to refer.

That the amount involved in the said suit exceeds the sum of five thousand dollars.

That in the proceedings in the said circuit court, and in the
397 final judgment and decree of the said circuit court, there was manifest error in this, to wit, that the said judgment and decree of the said court should have been in favor of the complainant and appellant granting the relief asked for in the said bill of complaint instead of dismissing the said complaint with costs.

Wherefore, your petitioner and appellant appeals from the said final judgment and decree of the said circuit court and every part therefore to the Supreme Court of the United States of America, and prays that her appeal be heard upon the proofs and allegations in the circuit court and upon such new allegations and proofs as may be presented, and that the said final judgment and decree of the said circuit court and every part thereof may be reversed and an-

nulled, and that your petitioner and appellant may have the
398 relief prayed for in her said complaint.

And your petitioner, as in duty bound, will ever pray.

Dated New York, November 11, 1881.

LAUTERBACH & SPINGARN,
Solicitors for Appellant.

Appeal allowed, November 16, 1881.

SAMUEL BLATCHFORD, *C. J.*

(Endorsed:) U. S. Supreme Court. Rebecca Gray, etc., against The National Steamship Co. Petition on appeal. Lauterbach & Spingarn, sol'rs for compl't, 45 William st., N. Y. city. Service of a copy of within is hereby admitted. Dated Nov. 17th, 1881. John Chetwood, sol'r for def't & appellee. U. S. circuit court. Filed Nov. 18, 1881; Joseph M. Deuel, clerk.

399 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Bond for Damages and Costs.

REBECCA GRAY, Administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, Complainant & Appellant,

vs.

THE NATIONAL STEAMSHIP COMPANY, Defendant & Appellee.

Know all men by these presents that we, Augustus A. Levey and Frederick S. Myers, are held and firmly bound unto the above-named defendant & appellee, in the sum of two hundred & fifty ($250.00) dollars, to be paid to the said defendant & appellee, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the sixteenth day of November, in the year of our Lord one thousand eight hundred and eighty-one. Whereas, the above-named complainant & appellant hath taken an appeal to the Supreme Court of the United States to reverse the judgment & decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York in the second circuit—

Now, therefore, the condition of this obligation is such, that if the above-named complainant & appellant shall prosecute her said appeal to effect and answer all damages and costs, if she shall fail to make good her plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

AUGUSTUS A. LEVEY. [L. S.]
FRED. S. MYERS. [L. S.]

Sealed and delivered, and taken and acknowledged, this sixteenth day of November, 1881, before me.

GEORGE W. VULTEE,
Notary Public. C. & C., of N. Y.

400 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Augustus A. Levey and Frederick S. Myers, being duly and separately sworn, each for himself, deposes and says: That he is a resident & a freeholder within the State of New York, & that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

AUGUSTUS A. LEVEY.
FRED. S. MYERS.

Sworn to this sixteenth day of November, A. D. 1881, before me.
GEORGE W. VULTEE,
Notary Public, C. & C. of N. Y.

Approved, Nov. 16, 1881.
SAM'L BLATCHFORD, *C. J.*

(Endorsed:) U. S. circuit court. Rebecca Gray, &c., *vs.* The National Steamship Company. Bond for damages and costs on appeal. Lauterbach & Spingarn, complainants' solicitors, 45 William st. U. S. circuit court. Filed Nov. 17, 1881. Joseph M. Deuel, clerk.

401 United States Circuit Court for the Southern District of New York, Second Circuit.

REBECCA GRAY, Administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, Complainant and Appellant,

vs.

THE NATIONAL STEAMSHIP COMPANY, Defendant and Appellee.

By the Honorable Samuel Blatchford, judge of the circuit court of the United States of America for the southern district of New York, in the second circuit, to the above-named, The National Steamship Company, defendant and appellee:

Whereas Rebecca Gray, administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, has lately
402 appealed to the Supreme Court of the United States of America from a judgment and decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, in favor of you, the said The National Steamship Company, and against the said complainant, and has filed the security required by law and the rules and practice of the said Court, you are therefore cited to appear before the Supreme Court of the United States of America, at the city of Washington, on the second Monday of October, 1882, to do and receive what may appertain to justice and shall be required by equity and good conscience.

Given under my hand, at the city of New York, in the southern

district of New York, on the sixteenth day of November, in the year one thousand eight hundred and eighty-one.

SAM'L BLATCHFORD.

403 LAUTERBACH & SPINGARN,
Sol'rs for Compl't & Appel'nt.

(Endorsed:) U. S. circuit court. Rebecca Gray *vs.* The National Steamship Company. Citation. Lauterbach & Spingarn, compl't's sol'rs, 45 William street, New York city. Service of a copy of within is hereby admitted. Dated November 17, 1881. John Chetwood, sol'r for def't & appellee.

404 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to four hundred and three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Rebecca Gray, administratrix of the goods, chattels, and effects which were of Wilson W. Gray, deceased, complainant and appellant, against The National Steamship Company, defendant and appellee, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty two, and of the Independence of the said United States the one hundred and sixth.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

Endorsed on cover: S. New York. C. C. U. S. No. 216. Rebecca Gray, administratrix, &c., of Wilson W. Gray, deceased, appellant, *vs.* The National Steamship Company. Filed 27th May, 1882.

15-116

In the Supreme Court of the United States.

OCTOBER TERM 1884.—*NO.* 216.

REBECCA GRAY, Administratrix of the goods chattels and effects which were of WILSON W. GRAY, deceased,

Appellant,

vs.

THE NATIONAL STEAMSHIP COMPANY,

Respondent.

Brief, Points and Argument for Appellant.

IN THE SUPREME COURT

OF THE UNITED STATES.

REBECCA GRAY, Administratrix, &c. Appellant,	
vs.	No. 216.
THE NATIONAL STEAMSHIP COMPANY, Appellee.	

This cause is before the Court, on appeal from a final decree in equity, of the Circuit Court, for the Southern District of New York, to which it was removed from the Supreme Court of the State of New York.

The allegations of the bill in substance are as follows:

That appellant is the administratrix of Wilson W. Gray's estate; Appellee is a foreign corporation of Great Britain.

That on the 16th of August, 1867, The National Steam Navigation Company, a foreign corporation of that country, made an agreement with the appellee,

[reference to which agreement is made on this appeal passim].

That on the formation of appellee, the identical officials of the Navigation Company became its officers.

That on June 23, 1868, appellant obtained judgment against the Navigation Company in the Superior Court of the City of New York, for $3,269.65, for causing the death of the intestate, the deceased husband of appellant, and that upon the judgment execution has been returned unsatisfied.

That the Navigation Company after the accruing of the cause of action involved in the judgment, transferred its property to appellee in fraud of appellant's rights to have the judgment satisfied.

That the judgment debtor at the time of the accruing of the cause of action, the judgment recovered thereupon, the issuing the execution and its return, was the owner of certain steamships of which no change of ownership had been made by bill of sale as required by the laws of Great Britain and Ireland, and that at said respective times, the judgment debtor had made no lawful change of ownership of said steamships or sale thereof or any of them.

That any alleged transfer was of certain steamships, which the judgment debtor owned at the time of the accruing of the cause of action, the recovery of the judgment, the issuing the execution and its return.

That from the 16th of August, 1867, to July 12th, 1870, the judgment debtor was winding up its existence.

That a former action against defendant by one Mil-

ler, an assignee of the judgment, had been discontinued.

That appellee refused to pay the judgment, and kept the property of the judgment debtor and disposed of it in fraud of plaintiff's rights to have the judgment satisfied, and that unless for the interposition of the Court the judgment will remain wholly unpaid.

The answers avers: inter alia.

That many of the officials of the judgment debtor became appellee's officials.

That on the 16th of August, 1867, the Navigation Company sold, conveyed, &c., its property to appellee for full consideration paid, whereupon appellee became the true and lawful owner of said property, including the steamships and since has contiuued to be sole owner.

That the ownership of the said steamships was effected by sale, by the Navigation Company to appellee, by good and sufficient instruments.

That the dismissal of the action in the Miller case was res adjudicata.

That a libel against the steamer for the collision (referred to in the complaint in the State Court) for the loss of the intestate's canal boat had been dismissed, and which dismissal had been affirmed in the United States Court, was also res adjudicata against appellant's cause of action in this suit.

The bill in this action was dismissed upon the pleadings and proofs.

It is claimed on this appeal that the decree should have been for the plaintiff pursuant to the prayer of the bill.

The appellant alleges that such dismissal is erroneous and specifies the following particulars, and propositions upon which the ~~decree~~ bill should not have been dismissed.

I. That the National Steam Navigation Company and the National Steamship Company are identical, for the purpose of satisfaction of the judgment in a Court of Equity.

II. The appellee is estopped from contesting the judgment having been duly recovered against the judgment debtor, and is bound to satisfy it.

III. No title passed to appellee, to the ships, on the 16th of August, 1867, or subsequently, to defeat the satisfaction of the judgment.

IV. That on the delivery of the ships to appellee, it became bailee to the judgment debtor of the property.

A chronological order of events is thus :

1867.

July 2d.	A plan for reconstruction of the judgment debtor to this appellee is initiated.
July 9th.	This plan progresses,
Aug. 16th.	It is effected by the agreement.
Oct. 24th.	The intestate, by the collision is drowned.
Oct. 30th.	The action is commenced.

Nov. 20th. Libel filed in the U. S. Court for loss of his canal-boat.

Nov. 29th. Claim interposed in the libel case.

Dec. 16th. The answer of the Navigation Co., in the action in the State Court is interposed.

31st. The answer to the libel case in the U. S. Court is filed.

1868.

June 23rd. Judgment recovered in the State Court, execution issued and subsequently returned unsatisfied.

1869.

Apl. 15th. Request of Secretary of judgment-debtor and appellee to Registrar to transfer ships in the Register.

" 17th. The ships are transferred and ownership altered of record.

1870.

July 1st. Meeting of judgment debtors directors, to take accounts, preparatory to winding up.

Final

12th. winding up of judgment debtor.

BRIEF, POINTS, and ARGUMENT for the PLAINTIFF.

I.

The judgment against the judgment debtor binds ap-

pellee by reason of the companies being identical for the purposes of the satisfaction of the judgment in equity.

FIRST: The identity of one with the other is demonstrated by the facts:

1. The same officers of the judgment debtor, continued officials of the appellee, ~~debtor~~, all, not "many," as evasively alleged in the answer. Record fp 19

2. The property of the one remained that of the other.

3. The place of business was unchanged.

4. The business itself was unchanged.

5. The only alteration was that of its name and its shares from one of thirty to three of ten pounds each.

SECOND: The identity of the one with the other is manifest from the following evidence of the intent of both corporators and legislative enactment.

1. The plan to reconstruct as intended by the corporators in the expressions adopted in the proceedings for that purpose. fp 5

2. The Secretary of both corporations in correspondence with the registrar of shipping.
APRIL 15th, 1869.

fp 41 42
fp 110 certificates

3. As intended by statute, a company can reconstruct itself and change its name, but such name, by the Companies Act 1862, must not be so identical with the name of another as to deceive the public.

4. By the merchants shipping act, ownership of a ship can only be conferred by bill of sale, if by one company to another, the one, by bill of sale must convey to the other ; the same as one individual to another.

That the identity was thus recognized by intent of corporators and statute is summed up in these particulars.

A technical objection existing as to the original charter authorizing the shares to be ten, instead of thirty pounds each, a plan for reconstruction is initiated, a new company is registered as the "Steamship Company," then this is changed into the National Steamship Company, identity of "National" being unobjectionable as adopted from. "The Steam ship Company," that company not having a nomenclature involving the designation "National" as its predecessor had thus: "The *National* Steam Navigation Company." The Secretary of the two companies furnished the Registrar of Shipping with certificates of the facts, then the Registrar and the Custom House commissioners are all satisfied with the statutes intent as to identity of the companies and the consequence follows in the result, viz: ownership altered to The National Steamship Company.

The Corporators and legislative intent being shown to preserve its identity, a new

Bank, &c., vs. Davis, 2 Hill, 462.
Dresser vs. Norwood, 10 Jurist, N. S., 851.
Thompson vs. Bell, 10 Exch., 10.
Ward vs. LeRoy, *et al.*, 69 N. Y., 96.
The New Hope & Del. B. Co., vs. The Phœnix Bk., 3 N. Y., 156.
Walker vs. Great Western R. R. Co., L R., 2 Ex., 228.

2. The defendant had an interest in the result and by its conduct is bound by the estoppel.

Johnson agst. Underhills, Exrs. 52 N. Y., 203.
Blaisdell vs. Babcock, 1 John, 319.
Cromwell vs. County of Lac. 94 U. S., 359.
Davis vs. Browne, ib 423.
Campbell vs. Rankin, 99 U. S., 261.
Aurora City vs. West, 7 Wall, 82, 96.
Heiser vs. Hetch, 86 N. Y., 615, citing this Court in the following leading case,
City of Chicago vs. Robbins, 4 Wall, 657.

Where this Court held the Judge's charge to be law, that Robbins the owner of the fee was liable to the city in $15,000 recovered against it, for injuries to the judgment creditor for negligence in not having the excavation guarded, Robbins having had *verbal notice* of the action, ergo he was bound by the judgment; Chief Justice Kent in 1 Johnson, cited above, decides the same proposition.

The Village of Port Jervis vs. The First Na-

tional Bk. of Port Jervis, 31 Hun. 107.

Also citing this Court, Robbins case, 4 Wall 657.

SECOND: This defendant (as is contended infra) was a bailee of the Penusylvania at the time of the drowning of the intestate, on the recovery of the judgment in the State Court, and subsequently and as such bailee, the judgment binds this defendant, because of *notice* of the action.

Burr vs. Bigler, 16 Abb. ~~Prac. R.~~, 178.
Hastings vs Drew, 76 N. Y., 9 Supra.
Bates vs. Stanton, 1 Duer 87.
1 Greenleaf, 527.
Pringle vs. Woolworth, 90 N. Y., 502.

THIRD: This defendant by reason of its Board of Directors and Managing Agent being the same, had control of the action in the State Court, ergo this defendant is estopped from contesting the judgment having been properly obtained against the judgment debtor, upon the well recognized principle in law and in equity, where a party having an opportunity to speak, or act upon, plead or offer proof in reference to a matter involved in controversy, has neglected so to do, at the proper juncture to the detriment of another, the party so neglecting is estopped, and the judgment obtained is *res adjudicata*, not only on the issue, but upon all matters which could have been advanced.

Irrespective of the failure to plead in abatement as contended (*Supra*). The action in the Superior Court involved the allegation in the complaint, that the Pennsylvania "belonged to

the judgment debtor, and formed one of their said line of steamers." p 31

It is established by the verdict, *this must have been proved on the trial, ~~and~~ there could have been no recovery.*

It is not contended proof contra was interposed.

If such proof had been interposed or even offered, had the proof been insufficient, or the offer rejected, the defendant had three opportunities to review the finding of the jury, according to the practice of the State Court.

1st. A summary motion before the trial Judge on his minutes.

2nd. On a case at Special Term

3rd. On appeal in banc.

The defendant had thirty days time to make a case on the merits p 33 which being abandoned it is now claimed here the evidence does not maintain the verdict against the right defendant who lays down, submits to this verdict and judgment on this question of fact, makes no sign, waits till execution is issued, and then foils the plaintiff upon the claim of appellee to the property.

Thus by its conduct this defendant is the judgment debtor, for the purpose of the trial, which if adverse to plaintiff. the device was propitious—if otherwise, the device was invoked to defeat the execution, and thus this device, on every occasion when useful for the

purposes of its plan is followed, before ~~its~~ the Board of Trade, and the Registrar of joint stock companies ff. 41 / 42 / 150 in pursuance of the plan and device of the directors and stockholders; as also on the application of the secretary of this defendant, and the judgment debtor to the Registrar of Shipping and the Commissioners of Custom at Liverpool.

POINT III.

No title passed to this defendant of the property of the judgment debtor, consisting of its fleet of steamships, to defeat the satisfaction of the judgment.

The National Steamship Navigation Company being a company incorporated under the Companies Act, 25 26 Vict., C. 89, wished to reduce the nominal value of their shares, without preserving the existing proportion between the paid and unpaid amount on the reduced share.

This could not be done by any existing company, in consequence of the 30 and 31 Vict., c. 131, § 21, —(*an Act amending the Companies' Act*).

To secure this end, the device of reconstituting the company with shares of reduced name, was resorted to. The Steamship Company was registered for this purpose, contemporaneous with the National Steamship Company, and to the new company there was a transfer of capital, offices, officers, from the old, and what purported to be a purchase of the old company's ships with the new company's shares.

The old company was, on the Register of Shipping, sole owners of so many vessels.

It was agreed as between the two companies, that the new should purchase from the old, the said vessels for shares in the new, fully paid up, amounting to £600,-000. What the effect of this agreement, immediately that it was made, may be an unnecessary question, because *as soon* as it was acted upon and carried out *by the delivery and acceptance of the new shares*, the new company acquired an equitable title to the said vessels inter parties.

This title was such a title as could be set up against the old company in any Court, but not against any other who had meanwhile bona fide got upon the register of shipping, as a purchaser of the same vessels from the old company.

This conferring of validity upon equitable title to ships is a new departure in the law of Great Britain from what had long existed in relation to this species of property. Formerly the statute law from the 34 Geo., 3, C, 68, down to the 8 & 9 Vict., C. 89, inclusive, was "that no transfer, contract or agreement for transfer of any ship, or etc., shall be valid or effectual for any purpose whatsoever, in law or equity, unless such transfer, etc. be made by bill of sale, etc., containing a recital of the certificate of registration."

The 17 and 18 Vict., C. 104, introduced a new policy and principle. And yet looking at § 55 of that Act, unexplained by anything else, the Courts (1st Vice Chan. Page Wood, now Lord Hatherley, followed on appeal by Lord Chancellor Campbell) decided in Liverpool Borough Bank *vs.* Turner, 2 De Gex., F. & I., 502, reported also, 29 Law Journal (chanc.), 827; on appeal, 30 Law Journal (chanc.), 879, that a mere equitable title

not expressed in a bill of sale gave no right.

This occasioned the passing of the Merchants' Shipping Act, 1862 (25 and 26 Vict., c. 63), § 3 expressly providing for the recognition and enforcement of equities against owners.

It will be seen that now, the cases under the old law are in direct conflict with this enactment, and are no longer applicable to shipping. The last of these cases were

Duncan vs. Tindall, 13 C. & B., 258.
Hughes vs. Morris, 2 De G. Mac & Gor, 349.
McCalmont vs. Rankin, ib. 403.

The 3rd section above referred to, when expressly giving effect to equities, provides as expressly that in so doing it was intended that it should be without prejudice to the enactment contained in 17 and 18 Vict., C. 194, § 43.

§ 43, after enacting that no notice of any trust shall be entered on the Register, proceeds: "and subject to any rights and powers appearing by the Register book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose, in any manner hereinafter mentioned, of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration."

So that after the above agreement between the two companies, and that agreement had been so far carried *out by delivery of shares*, the old company still standing on the Register as sole owner, could have given an indefeasible title to any bona fide purchaser by bill of

sale duly registered, and thereupon the only remedy of the new company would have been for damages and rescinding of the agreement, if that were still possible with due regard to rights and circumstances as against the old company.

The Horlock 2 Probate Divison, 243.
Bell vs. Blyth, Law. Rep., 4 Chanc. Appeals, 136.

In this state of things the old company in 1868 was made judgment debtor to the plaintiff.

In April, 1869, for the first time, the new company takes steps to put themselves on the Shipping Register as owner of the said vessels.

Their first step for that purpose is an application to the customs at Liverpool, the port of the Ships' Registry.

Now, if they had bill of sale upon the alleged purchase in 1867, any application to the customs was unnecessary. They had only to present bill of sale to the Registrar, 17 and 18 Vict., c. 104, § 57.

If they had not bill of sale they had them not, merely because they did not go about their execution. That is manifest on the face of the transaction. There was therefore no ground of necessity existing in the case for appealing to any extraordinary powers, such as Parliament.

There are no such powers reposed by Parliament in any person or persons, or board, or corporation, or body whatever. If there had been such powers of dispensing with bills of sale in the statutory form at the time of the Liverpool Borough Bank vs. Turner (*supra*), everybody, Judge and all, would have sustained the

appeal of the Bank.

Neither then nor since did exist, or have existed, or do exist, any powers of dispensing with the strict requirements of 17 and 18 Vict., c. 104, § 55. The interpretation of that section cannot be better evidenced than by the case of Liverpool Borough Bank vs. Turner.

There are powers lodged in the Board of Customs by the 17 and 18 Vict., c. 104, e-g. § 96 (to alter the forms of the instruments given in the schedule of the Act so as better to adapt them to business from time to time; but nowhere to dispense with the instrument; § 97, or power to dispense with a declaration or any evidence. The evidence here mentioned, is that which is auxillary to the act of registration, but does not include a bill of sale. If it were a bill of sale, it is evident that thereby the Registrar and the Board would be constituted supreme judges of the land, to deal with all rights and claims in respect of shipping property. Is it so? See the rebuke administered by Vice-Chancellor Page Wood, in Bell vs. Blyth (*supra*) to the Registrar, for tampering with the Register upon his own judgment of rights of property. That is reserved to the High Court. See Bell vs. Blyth, *supra;* Holderness vs. Lamport, 30 Law Journal (chancery), 489; Orr vs. Dickenson, 28 Law Journal (chancery), 516. There is the further power of the Board given by the 18 and 19 Vict., c. 91, of deciding, whether where a bill of sale does exist but in a form varying from that given in the statute, it shall be admitted on the register.

Since Bell vs. Blyth, *supra*, which occurred early after the Act of 1854, there has been in the books no other case of the Registrar daring to make an entry on the Register not evidenced and justified by the existence of a duly executed instrument in the statutory form.

The application, therefore, of the new company to be placed on the Register of Shipping by order of the Board, in the absence of bills of sale, was made on the ground of their identity with the old company, then standing as sole owner and about to be dissolved Evidence of the identity is supplied to the Board. That evidence is reported upon as sufficient and satisfactory. Therefore, the order of the Board which followed was simply a correction, not of a previous error, but of what had become a defect through the assumption by the company already on the Register, of a name which did not appear there and ought to do so. *The Registrar could not have made this alteration except upon duly executed transfers by bills of sale.* The Board, as the custodians and guardians of the integrity of the Register, felt upon the evidence before them that there was a defect on the face of the Register, which it was their duty to correct if they had the proper means of doing so, and they seem to have felt that the evidence supplied them not only was the sufficient means, but was the only means, which the case, upon that evidence, admitted of, since it appeared thereby that to rely on retransfers of bills of sale in circumstances where no property could pass by reason of the admitted identity of seller and buyer, would be to impose a falsehood and vain form.

Any other assumption but this places the act of the Board beyond their powers, and makes the entry of the new company on the Register in the absence of bills of sale, a ground which would justify a Court of Equity, upon application, to order the erasure of that entry from the Register.

It must be obvious that, further than this, the proof of the non-existence of powers of dispensing with bills of sale cannot be carried. It is proof of a negative. *Shall the defendant be allowed in law to claim its identity*

with the judgment debtor, in order to obtain the property, and in equity to disclaim the identity, in order to evade the consequences?

Auxiliary to this, Point III, the maxim "*omnia* "*praesumuntur rite esse acta*," applies in this.

That the Registrar and Custom-house Commissioners all acted in the matter of the change of ownership with circumspection and propriety. Accepting this maxim, it is a legitimate presumption that the Secretary of the reconstructed Company being located in Liverpool, with the archives of his Company under his charge, where these officials of the Custom-house were also located, and having the ability, by facile reference to the proceedings, he made these officials cognizant of the fact of the "device," the "plan for reconstruction;" and cognizant also that in pursuance thereof that the Steamship Company, by its directors, with the sanction of the stockholders, contemporaneously had been registered with no change of property, locality for transacting business, officials or otherwise, save that of its shares, and that the change of name followed in its order and sequence of the "device" and "plan" for reconstruction.

If this were not so, what was the reason for furnishing the certificate of the incorporation of the Steamship Company and certificate of change of its name to that of the judgment debtor. The Steamship Company's certificate of incorporation unconnected with the proceeding, device, plan, and reconstruction in this grave affair of alteration of ownership, produced to the officials at the Custom-house, is an interpolation and an inexplicable foisting before them a docu-

ment the presence of which reason asks for explanation in vain, but is amply accounted for, by the following:

That there was a necessarily technical difference between the two organizations to effect the object of the re-construction is not disputed. That the change by re-construction was *immediate* to the Steamship Company and change of its nameto the National Steamship Company, the agreement, the Secretary's request, the action of the Registrar and Custom House Commissioner, and all the facts show: A is re-constucted into B—B in eight days changes its name; A B and C being identical ergo A, and C are identical.

The agreement shows the plan to re-construct immediately into the Steamship Company, 5 that name only lasted from July 1st to August 8th, 10 On the 16th of August the agreement recognized the National Steamship Company had been incorporated. How? By "memorandum" of association. "The name of the Company is the Steamship Company (limited)," 7 and operation of the change of name on the 8th of August. it became The National Steam Ship Company.

On the 19th of April, 1867, the secretary made the request to the Registrar to have the transfer not to the abolished named Steamship Company, but *directly* to the National Steamship Company.

Thus the Registrar and Custom House Commissioners are in accord with the learned Judge, 7 Fed. Rep. pp. 289, 290.

"The meaning of the statement was that *by the re-*
"*construction* the steamers had *become the property* of the
"(sic) Steamship Company,"(should be National Steamship Company). "This was a fact."

On the 16th the name of the re-construction, as The Steamship Company, had been abolished since the 8th of August.

The Judge again says:

"The request merely was that the Registry might "be changed from the name of the old Company to "the name of the new Company; with this letter were "presented the certificates of the incorporation of the "new Company and its change of name."

The Chief Registrar says:

"The evidence of change of name of the Company "being satisfactorily shown by the enclosed certifi- "cates of incorporation, the register may be noted as "requested. The only evidence of change of name he "had in the certificate submitted was a change from "the first name of the new Company to the second "name of the new Company, and the conclusion there- "in that the request might be granted, could only "have been legitimately a conclusion that the vessels "being registered in such first name might be register- "ed in the second."

At the expense of reiteration, the Secretary's request stating the fleet was registered in the name of the Navigation Company, which had been re-constructed into the National Steamship Company, showing by the certificates that that Company had had its name changed from the Steamship Company, together with the record "ownership changed" *from* the Navigation Company *to the* National Steamship Company, per Board's order, omitting to notice the intermediate abolished nomenclature, shows the reason of dispensing with the bill of sale as also the declaration required by the statute of the qualification of the transferee to own a ship or share therein infra, in the recognition of *the identity, by operation of the re-construction, and by the*

operation of the re-construction, the ships had become the property of the re-constructed.

This maxim *omnia, &c.*, is fortified by these considerations.

1. What was done in the premises, was the act of a Registrar of shipping, and Custom House Commissioners at Liverpool, the emporium of the shipping interests of the world, where experience of the functions of such officials must be only commensurate with the vast interests confided to their hands by their government.

2. The Court will bear in mind also, the magnitude of the interests involved in the changing of ownership, of record—of eight first-class steamships in value millions.

3. Not only did these officials disregard the law in reference to a bill of sale being dispensed with, unless they acted in the matter of the satisfactory evidence of the identity by the reconstruction, but they further disregarded their domestic statute and which they must have handled daily, in its provisions, thus: transfer by one person to another must be by bill of sale (supra) "person" includes body corporate.

"Preliminary" To Merchant's shipping acts 17 and 18, Vic. Vide Schedule A. annexed to this brief.

Nay, further unless they acted upon the evidence of identity with the body corporate already of record, qualified to own the fleet by

its constitution and business, they furthermore disregarded the positive provision of their domestic statute, in this, That *no* corporation shall be entitled to be registered as owner of a ship or any share therein, until its Secretary has made and signed in the presence of the Registrar, a declaration showing the circumstances of the *constitution* and *business of the corporation*, proving it qualified to own the ship * * * Number of shares owned by the corporation * * * as also denial of unqualified persons or body corporate entitled to any legal or beneficial interest in such ship or any share therein.

Merchant's Shipping Act., 17 and 18, Vic., p. 460.

If this identity were not established to the satisfaction of these officials, how could they be cognizant of the fact that the Steamship Company and The National Steamship Company both by its constitution and business was qualified to own the ships, or of the other requisites of this statute, save by the declaration required of the Secretary to be made before the Registrar.

Now in this connection, what question and what difficulty, if any, is there adverse to the appellants case? On reference to the recognition of equities under the 25th and 26th Vic. Is admitted on all hands that under Geo. III., c. 60; §17, there could be no transfer of a ship vested for any purpose without a registered bill of sale. The defendant referring to the said Act in his brief below, page 5, says: "There is no such enactment "in § 55 of the Merchant's Shipping Act" (of 1854) "which says only that the transfer shall be by bill of "sale." but he adds: "It must be admitted, however, that there are "some English decisions which hold to the necessity of a "bill of sale under this section of the modern Act;" *i. e.*, under § 55 of the Act of 1854.

The 25 and 26th Vic., 63; § 3, did not abolish any statutory rule; it simply put a legislative construction upon the second part of the Act of 1854, which had been misconstrued to some extent in Liverpool Borough Bank vs. Turner, 2 Deg., F. & J. 502, decided in Dec., 1860, upon an agreement by owners to assign to the bank all their interest in a steamship; the bank advanced £10,000, and it was held both by the V. C., and on appeal that the agreement was ineffectual for the purpose of creating any security on the ship, because an equitable mortgage was invalid under the Shipping Act of 1854–5. Lord Campbell of the Appellate Court said: "Looking to the great peculiarity of "the forms of transfer and mortgage here required and "the purposes which they were to serve, I cannot doubt "that these and no other forms were to be used. To "acknowledge the title of a totally different set of own- "ers from that represented in the register would I think "be at variance with the policy and a violation of the "enactments of the Legislature. * * * If it had "been the wish of the Legislature to give effect indis- "criminately to all the modes in which at common law "an equitable interest might be created in ships, as in "other chattels, surely a proviso would have been added "to the mandatory sections, that although these forms of "transfer and mortgage are prescribed, any other form "should be held effectual."

Now, though in this case both courts did correctly apprehend and declare the requirements and policy of the Shipping Act of 1854 as to the only valid modes of transfer of a ship, yet it was considered that they went too far in holding that an owner who had obtained a loan of £10,000, could defraud the lender out of it by pleading that the security which he had given him was not in compliance with the statute. To prevent such injustice and dishonesty as that, to prevent registered owners and mortgagees of ships from making the Act of

1854, an instrument of fraud 25 and 26 Vic. c., 63; § 3, was passed which by its terms declares equities *against* owners and mortgagees, but none in their favor. It is as follows:

"It is hereby *declared* that the expression beneficial "interest whenever used in the second part of the Prin- "cipal Act"(*i. e.*, Act of 1854)"includes interests arising "under contract and other equitable interests· *and the* "*intention* of the said Act is that without prejudice to "the provisions contained in the said Act for prevent- "ing notice of trusts from being entered in the Register "book or received by the Registrar, and without preju- "dice to the powers of disposition and of giving receipts "conferred by the said Act on registered owners and "mortgagees, and without prejudice to the provisions in "the said Act relating to the exclusion of unqualified "persons from the ownership of British ships, *equities* "*may be enforced against owners and mortgagees of ships* "*in respect of their interest therein, in the same manner as* "*equities may be enforced against them in respect of any* "*other personal property.*"

It is clear as anything can be made by language that the provision of the Act just quoted does not repeal or abolish anything in the act of 1854, but in express terms declares the intention and the proper construction of the former Act, and it is evident, as Lord Coleridge says, and as Maclachlan says in his work on Shipping (page 41), that the latter Act was passed to correct the misconstruction placed on the former by the case last cited. There is not a word in the act of 1862 affecting the Act of 1854, so far as it requires a bill of sale to transfer a ship; it simply declares that it was the intention of the Act of 1854, that "equities may be "enforced *against owners* and *mortgagees* of ships in re- "spect of their interest therein," the same as against them in respect to any other personal property, it does

not enact or declare that equities may be enforced by owners or mortgagees as against *third persons*. It did not change the pre-existing law, and it did not change the rule laid down in the Liverpool Borough Bank case that the only valid transfer of a ship must be by bill of sale as required by the Shipping Act of 1854, and the acts antecedent thereto.

Let it again be said that the case last cited was in no wise affected by 25 and 26 Vic., c. 63; § 3, except in so far as it cut off the equities of innocent third persons *against owners* and *mortgagees*.

Otherwise that case is regarded as of high authority and has been approved since the Act of 25 and 26 Vic.

Thus in Ward vs. Beck, 82 L. J., (C. P.) 113.

Willis J., says; in 1863, "We were much impressed "with the judgment of V. C. Wood, in Liverpool Borough "Bank v. Turner, where that learned Judge laid down "that a mortgage transaction in order to operate as a "valid transfer of the vessel, must be carried into effect "by the means pointed out in the Registration Act and "in that judgment we entirely concur. The question "there arose on a bill for the specific performance of an "unregistered contract to make a mortgage of the ship "in futuro, as a security for an advance of money ; and "if the Court of Chancery had specifically performed "that contract, it would have been in effect to say, an "unregistered contract, which operates as a transfer, shall "by the assistance of the Court of Chancery, become a "transfer of a vessel."

Referring to the same case, Lord Coleridge says, in Hughes vs. Sutherland, L. R., 7 Q. B. D., 162.

"That decision was affirmed by Lord Campbell, on "appeal, and the case is therefore of high authority."

No case can be found in England since the Act of 1862, in which any equities have been extended to owners or mortgagees by virtue of the said Act. but there has been a legion of cases in which equities have been enforced against owners and mortgageees in favor of each other, and creditors.

In the Cathcart, L. R., 1 Ad. 341, (1867), equities were enforced in favor of the owner against a mortgagee—no creditor was interested.

In Lacon vs. Liffen, 31 L. J. Ch. 25, a registered mortgagee deposited his mortgage with a creditor and then became bankrupt, and it was held that such deposit took the ship out of the order and disposition of the bankrupt, and constituted the creditor equitable mortgagee, because the mortgagee, according to the Act of 1854, could not transfer his mortgage without producing the mortgage itself.

The creditor was protected.
See also Ward vs. Beck, 32 L. J. [C. P.] 113.

In Batthyany vs. Bouch, 50 L. J., Q. B. 421, it was held that a contract to sell a ship could be enforced by the seller, no rights of third persons being involved; but it was not *held* that the contract was of itself in any wise effectual to pass the title.

It is now important to inquire, whether according to the laws of the United States, there can be a transfer of a ship, valid as against the rights and equities of creditors and third persons, without notice, without a registered bill of sale or some equivalent instrument.

In the first place, it may be admitted that under the American Registry Act of Dec. 31, 1792, and from that time probably down to the Act of Congress of 29th July,

1850, a bill of sale was not essential to the transfer of a ship.

The old act provided that in the case of a sale or transfer, "there shall be some instrument in writing in the "nature of a bill of sale, which shall recite at length the "said certificate, otherwise the said ship or vessel shall "be incapable of being so registered anew."

It was held by Story, J., in Weston vs. Penniman, 1 Mason, 306, that while by the general maritime law, a transfer of a ship should be evidenced by a bill of sale and that a registered bill of sale was necessary in order that a ship should preserve her character as an American ship, yet that the legal title of a ship could be in one person, and the equitable title in another, and that such equitable title could pass by means of an agreement or other informal dealing or transaction between the parties, and he pointed out the difference between our Act of 1792, and the English Registry Act of 26 Geo. 3, c. 60 and 31 Geo. 3, c. 68, which declare that all transfers "or agreement for transfers made without re-"citing the certificate of registry at length in the bill "or instrument of sale, or agreement for transfer shall "be utterly void to all intents and purposes whatso-"ever.

It is only necessary to refer to the Act of Congress of 1850, to perceive that since that Act a recorded bill of sale is indispensable to the valid transfer of a ship, except as to the grantor or mortgagor.

U. S. R. S., Sec. 4192.
Act of Congress of 29th July, 1850.

"No bill of sale, mortgage, hypothecation or convey-"ance of any vessel, or part of any vessel of the United "States shall be valid against any person *other* than the

"*grantor or mortgagor, his heirs and devisees' and per-*
"*sons having actual notice thereof,* unless such bill, &c.,
"&c , or conveyance is recorded in the office of the col-
"lector of customs, where such vesssl is registered or
"enrolled."

Does not that act breathe with equities recognized by law against owners and mortgagors, the same as ~~if especially expressed~~ as by the English Act?

It was decided in Potter v. Irish, 10 Gray, 416; that a mortgage of a vessel not recorded, as required by the above act of Congress, conveyed no title as against an attaching creditor of the mortgagor, although the attachment was not made until after the mortgagee had taken possession.

Bigelow, J. said; "It is necessary to notice the pur-
"pose which Congress had in view, in enacting the pro-
"vision requiring such mortgages and transfers, to be
"put upon record. Its design was the same as that in-
"tended to be accomplished by all acts requiring a regis-
'try of deeds and other conveyances, to give notice to
"all persons interested of the true condition of the title
"and to prevent innocent parties, like purchasers or
"creditors from being injured, or defrauded by the exis-
"tence of prior transfers, and incumbrances of which
"they had no notice, and could obtain none when they
"bought property, advanced money upon it, or gave
"credit to parties who were in possession, and had the
"nominal title to it."

Prior to the Act of Congress of 1850, above cited, it probably was not essential to the validity of a bill of sale of a vessel, that it should be enrolled in the Custom House, though enrollment was necessary to entitle the vessel to the character and privileges of an American vessel.

Hozey v. Buchanan, 16 Pet. 215. (1842.)
Wendover v. Hogeboom, 6 Johns, 308, (1810.)

But the said Act of 1850 expressly declares that no bill of sale or other conveyance shall be valid against any other person than the grantor or mortgagor unless recorded.

That is, there must now be both a written instrument of transfer and it must be recorded and see

Thompson vs. Vanechten, 5 Abb. Pr., 460, (1857.)
Folger vs. Weber, 16 Hun., 512.
Aldrich vs. Etna Co., 8 Wall, 491.
White's Bank vs. Smith, 7 Wall, 646.

Where the said Act of 1850 is held to be the National Registry Act in regard to vessels, paramount over State laws, and it is assumed that Congress has created and controls that species of property known as Shipping and that there can be no transfer of it valid as against third parties except by a recorded instrument of transfer.

And referring to this Act of 1850 Earl J. says in

Best vs. Staple, 61 N. Y., 71, 76.

"It has been held that this Act is a proper exercise "of the exclusive jurisdiction of Congress, under the "Constitution of the United States, to regulate com- "merce with foreign nations and among the several "States, and that it excludes all State legislation in "respect to the same subject."

It is perfectly clear that according to our Act of Con-

gress of 1850 that sale by the Navigation Company of its ships was not valid as against the plaintiff, and in no wise affected her rights and equities against that company, because there was no recorded bill of sale nor any notice to plaintiff of such sale before she commenced her suit in the Superior Court.

There is one direct adjudication in the State of New York on this very point in

Parker Mills vs. Jacot, 8 Bosw., 161 (1861.)

Where it was held that a bill of sale under the Act of Congress of 1850 was void as against an execution creditor of the vendor, because it was not recorded in the office of the Collector of Customs, and because at the time of the execution the creditor had received no actual notice of such bill of sale.

This case is referred to in extenso in "addenda."

Again in Forster vs. Chamberlain, 41 Ala. 158, it was held that a mortgage of a ship was invalid as against subsequent creditors because not recorded as required by the said act of 1850.

The Court said: "To defeat subsequent creditors, "~~said~~ and purchasers without *actual notice* of its existence, "the Act of Congress, as we understand it, requires that "it should have been recorded in the Custom House at "Mobile where it is shown the vessel had been regis- "tered.

Same decision in

Chadwick vs. Baker, 54 Me. 9.
See also Perkins vs. Emerson, 59 id. 319.

Hozey v. Buchanan, 16 Pet. 215. (1842.)
Wendover v. Hogeboom, 6 Johns, 308, (1810.)

But the said Act of 1850 expressly declares that no bill of sale or other conveyance shall be valid against any other person than the grantor or mortgagor unless recorded.

That is, there must now be both a written instrument of transfer and it must be recorded and see

Thompson vs. Vanechten, 5 Abb. Pr., 460, (1857.)
Folger vs. Weber, 16 Hun., 512.
Aldrich vs. Etna Co., 8 Wall, 491.
White's Bank vs. Smith, 7 Wall, 646.

Where the said Act of 1850 is held to be the National Registry Act in regard to vessels, paramount over State laws, and it is assumed that Congress has created and controls that species of property known as Shipping and that there can be no transfer of it valid as against third parties except by a recorded instrument of transfer.

And referring to this Act of 1850 Earl J. says in

Best vs. Staple, 61 N. Y., 71, 76.

"It has been held that this Act is a proper exercise "of the exclusive jurisdiction of Congress, under the "Constitution of the United States, to regulate com- "merce with foreign nations and among the several "States, and that it excludes all State legislation in "respect to the same subject."

It is perfectly clear that according to our Act of Con-

gress of 1850 that sale by the Navigation Company of its ships was not valid as against the plaintiff, and in no wise affected her rights and equities against that company, because there was no recorded bill of sale nor any notice to plaintiff of such sale before she commenced her suit in the Superior Court.

There is one direct adjudication in the State of New York on this very point in

Parker Mills vs. Jacot, 8 Bosw., 161 (1861.)

Where it was held that a bill of sale under the Act of Congress of 1850 was void as against an execution creditor of the vendor, because it was not recorded in the office of the Collector of Customs, and because at the time of the execution the creditor had received no actual notice of such bill of sale.

This case is referred to in extenso in "addenda."

Again in Forster vs. Chamberlain, 41 Ala. 158, it was held that a mortgage of a ship was invalid as against subsequent creditors because not recorded as required by the said act of 1850.

The Court said: "To defeat subsequent creditors, "~~said~~ and purchasers without *actual notice* of its existence, "the Act of Congress, as we understand it, requires that "it should have been recorded in the Custom House at "Mobile where it is shown the vessel had been regis- "tered.

Same decission in

Chadwick vs. Baker, 54 Me. 9.
See also Perkins vs. Emerson, 59 id. 319.

In Secrist vs. German Ins. Co., 19 Ohio St. 476, where a vendee of a vessel, whose bill of sale had not been recorded, sued an attaching creditor of the vendor to recover possession, it was held that he could not recover unless he showed that the attaching creditor had actual notice of the sale.

It is required by § 4141 U. S. R. S. that where there is more than one owner of a ship she shall be registered in the port of the acting or managing owner, or otherwise she shall cease to be deemed a ship of the U. S.

In Johnson vs. Merrill, 122 Mass. 153, the ship was not so registered in the port of the managing owner, and therefore it was held that mortgages given by him, and duly registered were inoperative as against attaching creditors, for the reason that the mortgagees had not taken possession of the ship as they ought to have done.

Gray, C. J. said: "The mortgages from Joyce to the "plaintiffs were not valid as against his attaching cred-"itors without a delivery of possession, or a legal record "of the mortgages."

It may be observed that our Act of 1850, declares the absolute nullity of a sale as to all strangers to it, if not evidenced by a recorded bill of sale, and in this respect is substantially the same as the English Act of 34, Geo. B., C. 68, § 14.

Therefore the English cases of Hughes vs. Morris, 2 Deg. M. & G., 349, and M'Calmont vs. Rankin, id. 408, which held that prior to the shipping Act of 1854, any, agreement to sell a ship or any interest therein was utterly void, and could not be enforced in equity, are applicable, to show the proper construction of our Act of 1850.

It may be that as between the vendor and vendee of a ship, where creditors and other third parties are not interested, the title of a ship may pass by means of an informal contract, without a bill of sale, if a consideration be paid and there is delivery; and in such cases also the delivery may be informal and constructive.

Thus in

Bixby vs. Franklin In. Co., 8 Pick, 86, one Holmes was half owner of a ship and registered as such; he put his half share into the firm of Bixby & Co., and was credited with it in the firm books, and the firm had the use and profits of the ship, and paid for the repairs.

Parker, C. J., held that there was such a transfer and delivery by Holmes to the firm as gave it an insurable interest in the ships; but that learned judge said: "The "fact of the apparent ownership from the documents in "the Custom House does not affect the question of "property, unless the sale should be contested by a "creditor of Holmes;" and again: "Inconvenience may "arise in foreign countries, and in the Custom House, "from the want of a bill of sale, but the transfer is good "between the parties."

In Vinal vs. Burrill, 16 Pick, 401, one Valentine was the only registered owner, but parol evidence was held to be admissible to prove that Burrill & Co. were in fact part owners, so as to make them liable as such for expenses incurred by plaintiff. And in Badger vs. Bank of Cumberland, 26 Me. 428, there was a similar decision on a similar state of facts.

IV.

The Appellee by the agreement of August 16th, 1867, and subsequently, became bailee of the judgment debtors fleet of ships, when they were delivered to appellee.

1. There was no consideration to create the appellee a bonafide purchaser of the property, the claimed consideration of shares of the new company to the Stockholders of the old Company is inadequate to form a consideration. If it be claimed that shares which Appellee exchanged for shares of the judgment debtor, operated as additional capital being put in by appellee, such a claim is a delusion, because it would be simply adding to the property of the judgment debtor, property of its own, to illustrate if a partnership convey property to others, who pay no consideration except by giving a certificate or agreement to pay the partners the value of the property out of future earnings of the partnership, would that be adding or putting in more capital.

2. It is not contended that on the 16th of August, (conceding shares arguendo to be a consideration) there is any proof in the case that the shares were issued when Appellee claimed the Ship in the libel proceedings, nor when the appellants execution was defeated.

3. Admitting arguendo shares are consideration enough to create a bona fide purchase, *then this* defendant was bound to plead and prove, it had no notice of plaintiff's claim and judg-

ment before payment of consideration (id est) issue of stock, and not having so pleaded or proved, defendant took the property *in trust* subject to appellant's claim.

Murray vs. Foster, 2 John, Ch. 153.
Frost vs. Beekman, 1 John Ch. 288, 202.
Murray vs. Ballen, ib., 566,575.
Hopkins vs. McLaren, 4 Cow, 579.
Patterson vs. Browne, 32 N. Y. 81.

This denial of notice by the purchaser in his answer is not only rigidly required as essential, but it must be full, positive and precise.

Gallatian vs. Erwin, Hopkins, 48, 56.

The purchaser must not only aver and prove that he had no notice of plaintiff's rights before his purchase, but that he had actually *paid* the purchase money before such notice.

Jewett vs. Palmer, 7 John Ch. 65.
Harrison vs. Southcote, 1 Atk. 538.
Story vs. Windsor, 2 ib. 630.
Spicer vs. Walter, 65 Barb., 227.
DeMott vs. Starkey, 3 Barb. Ch. 403.
Jackson vs. Caldwell, 1 Cow. 622.
Gibson vs. Stevens, 8 How. 393.
Conrad vs. Atlantic Ins. Co. 1 Pet. 386.

4. The provisions of the agreement of August 16, are replete with the intent of each Company standing in relation of trustee to the other; the provisions of the Companies act of 1862, also regards this relation as existing pendente the winding up, and the Merchants Shipping act, until record title of ownership is perfect-

ed by operation of the Statute, creates the relation of trustee inter partes.

5. When the claim in the libel suit was interposed all that the appellee claimed was this; That it was the true and bona-fide owner of the ship, and no other person is the owner thereof; and the said Company is the true and *lawful bailee as such owner. Wherefore they pray to defend accordingly.* fr 148

Note. In this connection it may be said, this claim is not exonerated from the consequences of this position as bailee, by the subsequent unqualified ownership in the answer, and for these reasons, all elementary writers of admiralty practice, regard the *claim* as the character of the proprietary right of the claimant, and the answer relative and subordinate to the claim. The answer was interposed after the suit in the State Court, was at issue, on the docket for trial, and in existence for two months.

Non constat when the answer was filed the "bailee" relation was terminated as contemplated by appellee, by reason of some step or further act having been taken or accomplished as intended under the executory agreement of the 16th of August.

SECOND: There was no delivery or transfer of title which could operate as notice to appellant or otherwise to bar the action against the judgment debtor.

1st. Change of possession is not notice of change of ownership, unless it is open, visible, public and notorious.

Townsend vs. Little. 109 U. S. 504.
Staples vs. Fenton, 5 Hun. 172.
Meehan vs. Williams, 48 Penn. 238.
Billington vs. Welsch, 5 Binn. 129?
Cook vs. Travis, 20 N. Y. 400.
Rigney vs. Smith, 39 Barb. 383.
Garlinghauser vs. Whitwell, 50 ib. 208.
Pope vs. Allen, 90 N. Y. 298.
Bronn vs. Volkenning, 64ib. 76.

2d. Where title is inchoate or equitable in one and legal in another, and the judgment is obtained pending the legal title being in the judgment debtor, the perfection of title requiring by operation of law some act to be done by one claiming the equitable title the judgment debtor's title prevails in favor of the judgment creditor, as in the instance of transfers of stock by law being required to be in the books of the company.

Rosevelt vs. Brown, 11 N. Y. 148.
Warrell vs. Brown, 5 Barb. 210.
Adderly vs. Storm, 6 Hill 624.
Empire City Bank, 18 N. Y. 199.
Reciprocity Bank, 22 ib. 9. 17 and 18.
The case of Shellington vs. Howland, 53 N. Y. 371 is directly in point, and also as to Equities *against* Owners p. 376.

The rule is the same in England.

Castillem vs. Hobson, L. R. 10 Eq. 47.
Coles vs. Bristome, ib. 149.
" 486.
Cragg vs. Taylor " 641.
4 Hurl & C. 158, is a strong case in point affirmed, L. R. L. L. 131, and approved In Dix vs. Wrenck, L. R. 4 Ex. 154.
Fuller vs. Earle, 7 Ex. 796.

3. Had the whole fleet been delivered and the stock issued on the 16 of August, the Appellee's case presents this consideration adverse to its right to prevail against Appellant, that there was no notice to the public of this secret agreement between public companies of change of business name or any other change of affairs of this foreign Corporation here or elsewhere.

In cases ~~fact~~ before cited visible facts are required by change of title.

Where is the proof in this case that in New York, that the defendant by sign or symbol informed the public of any change.

As to the fact of delivery, two witnesses Messrs Rome the chairman, and Hayward the secretary of both companies, testified to the delivery, thus. All the Ships were delivered on the 16th of August, 1867, by the liquidators of the Navigation Company to the Defendant Company.

How delivered is not said, what the witness intends to convey is his conclusion that the delivery took place, by some operation of the mind that the delivery should be considered as effected by entry of the property on the books of the intended transferee or some other act, because physicial act of delivery of this fleet could not be accomplished, while some of the ships were at their domestic port, some in foreign ports, and others at sea, the business of the two companies by the evidence being in full operation uninterupted by the proceedings at home of the reconstruction and change.

Especially as the agreement of the 16th of August was executory in its provision thus:—will forthwith or as soon as conveniently may be *after the execution of these presents* by such means, deeds, acts, and assurances and

with such consents as may be necessary or expedient in that behalf convey, assign, release, transfer, *pay deliver* and make over, or procure to be conveyed, assigned, released, transferred, pay delivered, and made over to the National Steamship Company Limited * * * all real and personal property, &c.p 17.

Taking the circumstances of this case into consideration in the dispersion of the fleet, to disregard the requirements of the bill of sale, and allow title by delivery as claimed here by the evidence, to defeat the plaintiff, would be at the expense of any authority that can be cited adverse to the decisions here presented and also the spirit and intent of the cardinal provisions of the merchants shipping act, as to change of title, and ownership of ships.

Gardner vs. Howland, 2 Pick. 599.
The Sisters, 5 Rob. 159.
Chasteaneuf vs. Capeyson, T. R. 7 App. Cas. 1. 34, 3 Kent Com. 132.
Jay vs. Sears, 9 Pick 4.
Balam vs. Tucker, 1 Pic. 389.
Putnam vs. Vutch, 8 Mass. 287.
Atkinson vs. Malin, 2 F. R. 462.
Man vs. Gleinne, 4 Maul & S. 240.
Ex-parte Mathews, 2 Ves. Sen. 272.

This cause thus far has been argued in the order of the proposition involved in the preceding points.

In the defendant's brief below, it was claimed.

1st. The liquidators were necessary parties. That they are not is answered thus: This action was

commenced in 1877, in 1870 as liquidators they ceased to be in existence by the winding up; had they been in existence they were beyond the jurisdiction of the Court, (737 United Revised Statutes 12th, of Wheaton 193 shows they were not necessary parties also this point is decided adverse to defendant. 7th Federal Report 581.

2nd. Hibbs vs. Ross, L. R. 1 Q. B. 543 is cited adverse to appellant in this, that persons in charge of a vessel guilty of negligence are liable and not the owners. The time to advance this was in the suit in the State Court, to advance it in this action, is firing over the head of the case, the action now is to obtain satisfaction of a judgment out of property of the judgment debtor.

3rd. The defendant claims the Superior Court judgment is a " technical" judgment, this term is hard to define, especially in the face of pleadings, proofs, trial, verdict judgment thereon, unassailed acquiesced and unappealed.

4th. The decision in the libel case is not res adjudicata. One was in personam, the other in rem, the parties were not the same, the personam action in the State Court was tried *several months before the libel, case non constat, the testimony was dissimilar* and witnesses which this plaintiff could have produced in the former might not have been available in the latter case.

5th. The Miller case was not res anjudicata

Hope vs. Acker, 7 Abott, p 308.
Rees vs. Van Patren, 13 How, 258.
Van Allen vs. Schermerhorn, 14 ib. 387.

Harris vs. Del. Lack. & W. R. R. Co., 61 N. Y., 656.
Durant vs. Essex, 7 Wal. 107,110.
Gregory vs. Gregory, 1 Sweeny, Sup. Ct. Rep., 625.
Mitchell vs. Cook, 29 Barb, 243-253.

The Miller adjudication adverse to appellant involved dissimilar testimony, *since* the Miller case the appellant discovered evidence that the Ships had not been vested in this defendant on the 16th of August, 1867, and that in law the defendants had asserted their identity to obtain the property without a bill of sale as contended supra, and that they had certified their identity in order to do so to the Custom House officials, and that the ownership was not changed of record till April, 19th, 1869; hence the payment of costs, and discontinuance in the Miller case and this case was brought in the *same* Court where the Miller case has been.

One more consideration remains to be presented to this High Court before closing the brief of appellant in error, that is: ought the case to be dismissed in a Court of Equity, upon the ground that notice by this defendant to this plaintiff has been given in time and place of the ownership of the Pennsylvania adequate enough in equity to put her on her guard, and which she at her peril disregarded. Let it now be the office of this branch of this argument to demonstrate that the defendant has been highly derelict in not giving notice and that the appellant is exonorated from the charge of disregard of notice.

Conceding arguendo that the agreement of August, the 16th, 1867 *was executed* enough, whereby the Pennsylvania (without bill of sale, without delivery, and

without issue of stock as supra contended) passed the ownership to this defendant, or conceding arguendo that the contract *was executory* and that delivery of the ship and issue of the stock one was, or both were, sufficient to pass the title–why was not notice of this title of this defendant to the Pennsplvania given in the State Court by testimony in the case; the lurking defeat of the execution after the judgment, after withholding this notice; after refusal to review the evidence on a motion before the Judge summarily on his trial minutes, on a case after getting time allowed therefor, or by appeal, amounts to a fraud upon the plaintiff.

By the domestic act of the appellees " constructed " or " re-constructed " notice of its existence by its full name and statutory designation is required to be given to the public by having its name painted or affixed in a conspicuous position, on the outside of every office and place of business in which the business of the Company is carried on. Therefore when the Navagation Co. was reconstructed into the Steamship Co. the latter name should have been painted or affixed everywhere in place of the former.

Companies Act, § 41.
Notice of charges specifically affecting the Property of the Company § 42,

A fortiori does this apply in a foreign locality to the appellant's domicil—where the most conservative enactments exist to protect the public by notice of dissolution of bodies corporate.

2 R. S. § 61.
Code Civil Pro. 2423, 2430.
Corning Receiver, 26 Barber, 60.
Johnson vs. Underhill, 52 N. Y. 203.

Appellant is exonorated from any disregard of notice for the following reasons :

The notice of the claim in the libel case was qualified as owner as "bailee" thus, "and the said Company *is the true and lawful bailee* thereof as such owners," wherefore they pray to defend accordingly. p 148

The form of a claim by an owner, and by abailee is as per schedules C and D, annexed to this brief.

It is elementary that the claim must be *jus in re,* and not *not jus ad rem, and* that the claimant must take his stand, and assert his proprietary interest in positive terms under oath.

I Abbotts U. S. Court Prac. 77.

Any notice certainly can only be claimed to have been conveyed to Appellant individually by implication (idest)notice to her procter, ergo notice to her; that individual notice was not conveyed to her the presumption is in her favor, because she being a non resident, or if she had been personally present and had read the claim or answer, the distinction between National Steam Navigation Company, and National Steam Ship Company, in view of her sex and condition in life, would have passed unnoticed, in all probability.

For appellant to be defeated in view of the dereliec tions of appellee in this behalf of notice would be the irony of fate of the cause, and for this reason. Had the learned Judge's attention below ~~being~~ called to the report of the case, not in the brief recitals in 4 Hun, been

but in the more elaborate report in the 67 Barbour, this notice of implication to her per her proctor would have been swept away in this, that in the efforts of her proctor in the admirality case, subsequently her attorney in the Superior Court, (see subscription of papers) it appears patent how he was hoodwinked.

The extract from the report showing this is thus:

"It was not error to exclude the statement of the agent as to the ownership of the "Pennsylvania;" to make declarations of that character, was no part of the duties of his employment; *and although his assertion that the National Steam Navigation Company was the owner of the Pennsylvania, doubtless led to the commencement of the suit against the wrong party,* yet it *does not establish the fact asserted, nor charge the present defendant* with the *judgment* in that cause *by reason of its falsity.*" Per Davis, P. J., 67 Barbour, p. 289.

After appellant returned to this same Court with newly discovered testimony, from the records of the Custom House, and which Court knew of this baffled testimony and falsehood and its source, this appellee ought not to successfully insist upon the want of notice by reason of another tribunal to which the cause has been removed, being unaware of it, in the veiled report of the cause presented to it, instead of that report which, in effect not only exonerates the appellants ~~form~~ from laches as to notice, but actually presents the effort to prove false notice by appellee's agent.

Let it be borne in mind in this connection, Mr. Rome testified that the Navigation Co. did no business from August 16th, 1867. The managing Agent four months afterwards verifying the answer says "he is the only managing agent of the Co. in the United States."

The complaint alleged in the State Court that the Pennsylvania belonged to the Navigation Company and formed one of its line of Steamships, the answer (in view of a specific or general denial being sanctioned as to each allegation in the Complaint) by the form adopted, ~~A~~ 32 was a blinking accomplishment by device, and the trial which followed this intended blind issue was as devoid of notice as the answer was intended to be, resulting in the defeated execution, and which result involved the defeat of the appellants judgment and the statute, which required notice by plea in abatement, as contended for supra.

For the roll of centuries the law of appellee's domicil has demanded the "grand bill of sale" to maintain the title to a ship ; for a like solemn period her registry challenges the world; for over a century her title other than by bill of sale in law and in equity by reiterated enactment has been declared void for any purpose whatsoever, conservative enactment requires her registry shall be noted on the record as to-day hour and minute; Federal legislation has adopted the wisdom and policy of these foreign enactments; authorities from abroad and at home have been amply laid before the Court expounding these enactments. Adverse to the appellant the recognition of equities by law has been advanced, to meet which it has been as supra contended this declaratory enactment is not intended to affect the case at bar.

Next the agreement of August 16, is advanced by the appellee; irrespective of the contention that it does not dispense with the bill of sale, this executory contract is unavailable it not being proved to have been executed by delivery of ships nor issue of shares, therefore to accept this executory contract and to hold, that the whole fleet

was delivered on the 16th, that the shares whenever thereafter issued (no proof being in case of any issue) upon the ground that this agreement to deliver ships and issue shares related back to the 16th, and thus bills of sale were in effect retroactively created out of and by operation of these contingencies, and in futuro intended events, whereby bills of sale per se were dispensed with, would be a dispensation as a precedent (in face of the statute and authorities cited to maintain them) awakening apprehension, of weakening the design of every enactment to protect the public from unregistered transfers of ships, and from secret agreements, trusts and liens, affecting proprietary rights of owners.

The object of the Statute being to erect barriers around one of the greatest properties of the world, it is contended that a judicial precedent which disregards the record of a ship, and countenances a *constructive* bill of sale between parties unknown to the record and unknown to the public would be a departure in jurisprudence, inviting a flood of litigation affecting rights intended to be guarded by the register as a beacon, instead of being exposed to distraction and defeat by the conversion of the register into a decoy.

The case at bar presents forcible illustration for jurisprudence adhering to the design of legislation, in its wisdom and policy which demands the record of a ship shall be the arbiter of the liability of owners in the event of a conflict between them, as to their liability arising out of relations unknown to the record.

In October intestate is drowned in a locality (three thousand miles from the domicile of appellee,) where the Navigation Company was only known as the owner of the ship alleged to have caused the calamity.

In August preceding, an agreement had been made whereby the title to the ship is claimed to be changed the agreement is only known inter parties, unknown to the world it reposes in the silent archives of the appellee, in this three thousand miles separation from access to the appellant containing its executory provision thus: ff 10, 11

"The National Steam Navigation Company, Limited, and their liquidators will forthwith, or as soon as conveniently may be, *after the execution of these presents* by such means, deeds, acts and assurances, and with such consents as may be necessary or expedient in that behalf, convey, assign, release, transfer, pay, deliver and make over, or procure to be conveyed, assigned, released, transferred, paid, delivered and made over, to the National Steamship Company, Limited, *or to such person or persons, body or bodies, as the said last mentiomed Company may require or direct*, all such real and personal property, of what nature or kind soever, whether corporeal or incorporeal, and whether in possession, reversion or in action capable of assignment and transfer as are compromised in or make up or pertain to the several items appearing under the head of assets in the said books, papers and documents so laid before the said parties hereto of the second and third parts respectively, as aforesaid, and which books, papers and documents it is hereby agreed shall be given up to the said National Steamship Company, Limited."

NOTE—The fact that appointees ("such person or persons, body or bodies as appellees may require or direct") are provided for, shows this be an executory agreement.

Let it be supposed by reason in the admiralty case, disclosing the claimant being on record, as owner, even as

bailee of the Steamer, the appellant is awakened and becomes cognizant of the agreement and the result of this is that she flinches from her suit against the Navigation Company or discontinues it and turns to the appellee for redress; it is now claimed to be demonstrated that there would have been such distractions in such an action as to have rendered it hopeless.

In order to succeed in the case the appellee would have had to adopt the agreement as furnishing elements to create a bill of *sale by construction*, and the intended creation would have had to depend upon the ability to prove delivery of the ship to the appellee to have occurred by the 24th of October, and the shares to have been then issued as a consideration. Where was her ability to prove this? It is no answer to say that was appellants misfortune and not her fault, and that these are incidents liable to human affairs, the answer to that is thus: human affairs administered in their wisdom have provided records to protect against such difficulties which, but for such protection would have encompassed the appellant's case.

Let it be supposed appellant had turned from the Navigation Company and sought redress against appellee resulting in judgment against it, on execution its position would have been ~~charged above~~ about! handy dandy! this execution should not be upon a judgment against The National Steamship Company but against The Navigation Company, the owner of the Steamer of record in the Custom House.

In view of this claim of ownership as bailee, in view that no recovery could have been had in the action for the loss of the intestate on a complaint charging ownership of the Steamer in the Navigation Company and its negligence without affirmative proof of this ownership and negligence, in view of no attempt having been

made to disturb the verdict on the facts, it is contended that the appellants' judgment in the suit maintains the discretion of standing by the record as to ownership of the steamer, that the cause of the appellant would have been hopeless against the appellee for inability as to proof supra, demonstrated; therefore in all these views, the case presents vehement considerations, that the judgment is in accordance with the design of the law that the record of a ship is the arbiter of her ownership.

John Fitch
Counsel for Appellee

SCHEDULE A.

Form of Entry of Change of Ownership from one body corporate to another.

Name of Person from whom title is derived.	Number of Shares Affected.	Date of Registry.	Nature of Transaction.	Name, Residence and Occupation of Transferree Mortgagee ob other Person Acquiring Title.
The British and American Navigation Company.	64	5 Dec. 1863. 11:30, A.M.,	Bill of Sale Dated 24 November, 1869.	The National Steam Navigation Company, (Limited,) having its principal place of business at Liverpool, England.

p. 80 form No. 20

SCHEDULE B.

Declaration of a Body Corporate.

Name of Ship.	British or Foreign Bbuilt.	Port of Registry.	How Propelled.

I the undersigned A. B. of the Country of Secretary of the Company, declare as follows:

(1). That the said Company was incorporated by virtue of an act of Parliament &c.

(2). That the said Company is subject to the laws of the United Kingdom, and has its principal place of business at .

(3). That said Company is entitled to be registered as Transferee of shares of said ship.

And I make this solemn declaration conscientiously believing the same to be true.

Signed.

Dated at the day of 188 .

Made and subscribed by the above A. B. in the presence of me.

Signed.

Name of Registrar.

The aforegoing is the form of declaration of ownership by a body corporate, required by law (56 sec.) Merchants Shipping Act 1854, 17 and 18 Vic. pp. 622 623 before it can be registered as owner, and irrespective of what the Statute terms the declaration of the "original" owner.

Ergo, the dispensing with this statute requirement by the entry ownership changed from the Navigation Company, to the appellee per Board order April 17, 1869, shows the recognition of identity involved, as requested in the reconstruction and change of name, the appellee not being intended or contemplated as a *new owner*, but de facto and de jure the original owner whose original declaration being on record remained de bene.

SCHEDULE C.

Form of Claim in Admiralty to Ship by Owner.

Caption and Title.

And now A B the owner of the ship intervening for himself in the said ship, appears before the honorable Court, and makes claim to the said ship as the same are attached by the Marshal, under process by this Court, at the instance of C D, and the said A B avers that he the said A B was in possession of the said ship at the time the attachment thereof, and that the person above named, is the true and bona fide owner of the said ship, and that no other person is the owner thereof, wherefore he prays to defend accordingly.

2 Abbott's U. S. Prac. 3d Ed. p. 378, form 24,.

SCHEDULE, D.

Form of Claim in Admiralty by Bailee.

Title.

And now A B intervening for the interest of C D, appears before the Honorable Court, and makes claim to the said ship, her tackle, apparel and furniture, as the same are attached by the Marshal, under process of this Court, at the instance of E F, and the said A B avers that he was in possession of said ship at the time of the attachment thereof, and that the person above named was the true and bona fide owner of the said ship, and that no other is the owner thereof, and that the said A B is master of the said ship, and the true and lawful bailee thereof for the said owner, wherefore he prays to be admitted to defend accordingly.

~~721~~ Fields Federal Jurisdiction, Pleadings, Practice and Proceedings, p. 721.

15-116

U. S. Supreme Court,

GRAY, Administratrix, &c.,

Appellants,

vs.

THE NATIONAL STEAMSHIP COMPANY,

Respondent.

Addenda to Appellants' Points, &c.

ADDENDA.

The following ~~three~~ cases, as collated, are presented *in extenso*, by reason that many of their circumstances are similar to the case at bar, and several of the propositions involved are decided as contended by the appellant.

The material facts in Hastings *vs.* Drew, 76 N. Y., 9, are substantially the same as in the case at bar, and the principles there applied that the stock and property of every Corporation is to be regarded as a trust fund for the payment of its debts, upon which creditors have a paramount lien. In that case the directors of the New Jersey Steam Navigation Co. having disposed of all the other property of the Company, and divided the proceeds among the stockholders, proceeded in February, 1864, to sell the remaining property of the Corporation's steamer "Vanderbiit," at auction, under an "arrangement;" that one of the directors should buy it in for the directors and such of the stockholders as should participate in the arrangement, and that the stockholders who did not participate should receive in money the proportionate part of the sum bid, to which they were entitled

as stockholders. Accordingly a director bid at the sale, and bought in the steamer for $85,000; no money passed from him to the Company, but the directors and stockholders who participated, *paid* to the stockholders who did not participate, the proportion of the $85,000, to which they were entitled. The steamer was registered in the New York Custom-house in the name of the Company as sole owner, page 11, case cited, and the Company continued the whole management, possession, and charge of the steamer as before.

In July, 1864, the steamer collided with, and sank a canal boat. Suit thereupon was commenced against the Company. The steamer, at the time of the collision was owned by the N. J. Steam Navigation Company. The complaint alleging Case and exception p. 17 folio 50, in the (Bound Volume N. Y. Ct. of Appeals Cases), ownership and negligence of the persons in charge of the Steamer.

All the defendants in the creditors action, 76 *N. Y.* 9 *one being President of the Company, and the others Directors and Stockholders, had knowledge of the cause of action at the time of its occurence.*

The Company appeared in the action. Defendant, Drew, as its President verified the answer, March 11, 1865, in which he swore on that day he was the President of the Company (p. 12). Judgment in the action was obtained May, 1868; on execution returned unsatisfied the judgment creditors brought an action in the nature of a creditors' bill, against the directors and stockholders who engaged in the arrangement in order to reach the property of the Company, which passed into their hands.

(It should be said that in March, 1865, a bill of sale of the "Vanderbilt" was executed by Drew, as President of the New Jesrey Steam Navigation Company, and was recorded in the Custom-house).

In answer to the bill, it was pleaded by two of the defendants that at the time of the collision the "Vander-" bilt" was not owned nor controlled by the Company, but by the parties who participated in the arrangement aforesaid; that long before the collision the Company sold out the "Vanderbilt" and other property, liquidated its debts and affairs, and thereupon ceased and discontiued its business as a Corporation; and that the judgment against the Company for damages was obtained by the fraudulent admission of the President Drew.

There was testimony that the sale of the "Vander-" bilt" was public, and advertised in two newspapers for several days before it took place in the Exchange salesroom.

Such sale was advertised and announced by the auctioneer, as being made to close a concern, and after the sale new books were opened, and there were no more meetings of directors; and also, that there were many stockholders who did not participate in the arrangement, and that they were paid their proportionate parts of the $85,000 by those who did parcipate.

It was held that there was no genuine sale, which divested the Company of the title to the boat, and that the contention that the claim for damages caused by the collision was not a legal and valid claim against the New Jersey Steam Navigation Company, but was only a claim against individuals, who were running the "Vanderbilt" on their own account,

"*was without merit*," and could not be upheld; that the judgment for damages having been obtained against the Company before the expiration of the charter, the liability of the defendants who had received its property, was fixed before the dissolution, and that thereupon the property and assets of the Company was a trust fund in the hands of the managers of the Company for the payment of its debts, in accordance with 1 R. S., 600, §9, which provides that the directors or managers of a Corporation, at the time of its dissolution *by whatever name they may be known in law*, shall be the trustees of the creditors and stockholders, and shall have full powers to settle the affairs of the Corporation.

The answer alleging that the judgment in the personam action against the Company was by the fraudulent admission of its President, does not appear (in 79 N. Y.), but is set forth (Bound vol., Case in Court of Appeals, July, 1878 to July, 1879, vol. 478, pp. 20 to 24 of Case and Exceptions), which also contains testimony that the steamer was, after the auction, run on account of those for whom the director had bid her in (under the "arrangement") nobody but them participating in the business after the purchase (pp. 58 and 59), a new office being taken, and a new set of books opened (p. 62, Case and Exceptions).

The finding of fact that the steamer remained recorded in the Custom-House, in the name of the Navigation Company *as owner*, at the time of the cause of action, accrued by the collision with the canal boat is at (p. 80, VII., finding of fact, case and exceptions).

The Parker Mills *vs.* Jacot, 8 Bosworth, 161.

In this case the Attorney accompanied the Sheriff to the vessel; they were told Sprague, the registered owner at the Custom-House, had no interest in her. Papers were produced to support this assertion, (the enrollment) in the name of the Parker Mills, who had actually a bill of sale of the vessel; testimony was adduced that the attorney abandoned the seizure, *and individually informed his client* of the claim. It was held this amounted to insufficient notice; that under the Act of Congress, July 26th, 1850, the bill of sale was void by reason of its not being registered in the Custom-House. Each Judge in banc who heard the cause, delivered an opinion. Justice Bosworth (p. 177) says : Assuming the Act constitutional, every transfer of a vessel is of no effect as to creditors or owners not having actual notice of it unless it be recorded, although the vessel be *in posession* of a *purchaser* in good faith, who has paid full value at the time it is seized on process at the suit of such creditor.

Johnson *vs.* Underhill, 52 N. Y., 203.

April 19, 1868, plaintiff being *registered* owner of shares, transferred them, delivering certificate, with power in blank to transfer, on the books of the Company.

In July and August, 1868, causes of action accrued against the registered owner, who being sued, gave notice to the equitable owner, and requested him to defend. Judgment was taken by default. The Act for the formation of the Company in which these owners (legal and equitable), held the stock, by sec. 25, provides: No transfer of stock shall be valid for any purpose whatever until it shall have been entered in the book of stockholders of the Company; there is

also a provision that no transfers shall be valid for any purpose, except to render the person to whom it shall be transferred liable for the debts of the Company.

Plaintiff paid the judgments, and it was held, the judgment on report of the Referee holding that the plaintiff could recover against the equitable owners and representatives for the amount paid, to satisfy the judgment should be sustained, and the judgment reversing the Referee was error, thus these five propositions contended fer in the case at bar are not sustained in this case.

1. Where the legal title is vested in the judgment debtor, the judgment creditor has a right of satisfaction against the property, where the law provides its transfer for any purpose shall be invalid unless the legal title be divested as required.

2. Inclusive causes of action accuring *subsequent* to the equitable title being created. Case cited page 204.

3. Equities as *against* owners may be enforced id est between the legal and equitable owner. p. 211.

4. As *Bailee* id est trustee the equitable owner becomes, liable upon the ground he is chargeable with knowledge of the law of his liability which fastened upon his relationship to the legal owner. p. 211.

5. The equitable owner was estopped by the judgment against the legal owner, by reason of notice to the former of the pendency of the action, and his neglect and silence in the defence. p.p. 204–210.

Finnegan vs. Carraher 47 N. Y, 498.

Is material as to appellant's right to have been informed by visible signs and physical evidence of change of the Companies name.

If our law differed with that of the appellee's domicile as to this right, the appellee being a foreign corporation owned a quasi allegiance to this jurisdiction, and then our law would prevail.

Pringle vs Woolworth, 60 N. Y. 502.
U. S. Bank vs. Dandridge, 12 Wheat. 79.
Gibbs vs. Queens Ins. Co. 93 N. Y. 114-128.
Lafayette Ins. Co. vs. French, 18 How. U. S. 340.
Merchant's Mefg. Co. vs. Grand Trunk R. Co. 11 Abb. N. C. 183.
Moulin vs. Trenton Ins. Co. 25 N. J. L. 57.

Our law does not differ with that of the appellee's domicile in this respect, as to the necessity to protect parties by notice of Change of Name, Sect. 13 of Companies act of 1862, is headed, "*Provision for protection of Creditors*" Sec. 41 of that act provides that notice of the existence of the company, is required to be given by having its full and statuatory designation painted or affixed in a conspicuous position on the outside of every office and place of business, in which the business of the Company is carried on, in the absence of any evidence of this, the case in the Court of Appeals, now cited Per Allen Judge, is thus:

If by any act or declaration, the plaintiff has been induced to omit, to make another a defendant with the

present defendant, or has sued the defendant who was interested in the subject-matter of the controversy, instead of another having a subordinate interest, and who might have been sued, and has incurred costs and expenses, and been delayed in the prosecution of an action in proper form, in which he might have recovered his property, and will be greatly the loser, if the defendant is now permitted to gainsay his statements, the defendant should be concluded by his representations as in other cases, especially as the real matter in controversy has been tried, and the only effect of permitting him now to contradict his statements, will be to compel the plaintiff to pay him a large bill of costs, and commence an action de novo against him to retry the questions at issue. Estoppels are allowed for the prevention of fraud, and that which will enable a party to keep the lawful owner of property out of possession for a series of years, and put him to great expense by a technical mistake as to the person to be pursued, when the substantial party has been reached, is a fraud sufficient to support an estoppel.

15-116

Office Supreme Court U. S.
FILED.
MAR 27 1885
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States,

OCTOBER TERM 1884.—*NO.* 216.

REBECCA GRAY, Administratrix of the goods, chattels and effects which were of WILSON W. GRAY, deceased,

Appellant,

vs.

THE NATIONAL STEAMSHIP COMPANY,

Respondent.

Brief, Points and Argument for Respondent.

Supreme Court of the United States.

REBECCA GRAY, Admin'x,
Appellant,
vs.
NATIONAL STEAMSHIP COMPANY,
Respondent.

BRIEF OF RESPONDENT.

STATEMENT OF CASE.

On the 24th day of October, 1867, the steam-tug *Princeton* was about completing her voyage from New Brunswick, the Raritan terminus of the Delaware and Raritan Canal to New York, with a tow of fourteen canal boats loaded with coal. Among these boats was one known as No. 605, of which the Lehigh Coal and Navigation Company, and Wilson W. Gray, (appellant's intestate,) were joint owners.

Near the mouth of the North River, they met the British Steamship *Pennsylvania*, of which this respondent, a British Corporation, was the owner, just starting upon her voyage to Liverpool. A collision took place between said canal boat and said steamship, by which said canal boat was sunk, and in which collision the said intestate of appellant was killed.

Appellant took out letters of administration upon the estate of said Wison W. Gray, from the Surrogate of the City and County of New York, on the 29th day of October, 1867. (Record p. 13.)

Appellant, by Goepp & Stern, her attorneys, then brought her action, in the Superior Court of the City of New York, under the Statute of the State of New York authorizing such actions, against *The National Steam* NAVIGATION *Company* by summons, dated October 31st, 1867, and in her complaint in such action alleged that said *National Steam* NAVIGATION *Company* was the owner of said steamship, and that her intestate's death was occasioned by its negligent management.

The Navigation Company denied these allegations; a trial was had in the action before a jury on May 12th, 1868, and Appellant obtained a verdict on which judgment was entered June 23d, 1868, for $3,289.05. (Record pp. 30-33.)

Three boats of the tow, including the boat 605, were crushed and sunk in the collision, three separate libels were filed against the Steamship *Pennsylvania*, on November 20th, 1867, in the United States District Court, for the Southern District of New York, to recover *in rem* for the loss of the canal boats by Max Goepp, as proctor, who was one of appellant's attorneys in the Superior Court action. (Record pp. 127-135).

For the libels other than that of Appellant, amended libels were afterward substituted. Two other libels were filed against the *Pennsylvania*, in the same Court by other proctors for the loss of the coal, one for the coal upon the boat of Appellant's intestate. (Record pp. 136-139.)

In all these suits, *in rem* this Respondent, *The National* STEAMSHIP *Company*, appeared and claimed, bonded and answered as sole owner of the *Pennsylvania*, and such claim and bond were filed in Appellant's

suit, in the District Court, November 29th, 1867, and answer verified December 31st, 1867, and filed. (Record pp. 121-124, 145-169.)

These five suits in the District Court, were tried together, (Record p. 170) and a decree entered in each dismissing the libel (Record pp. 185-188) because the *Pennsylvania* was faultless, and the collision had been occasioned by negligent action on the part of the *Princeton*. (Record p. 204.)

Appeals were taken in all five suits, including that of this Appellant, to the United States Circuit Court, for the Southern District of New York, (Record pp. 188-202) and decrees were entered in each suit dismissing the libels. (Record pp. 125-6.)

The *National Steam* NAVIGATION *Company* was incorporated under the British Statute, known as the Companies Act of 1862. (Record p. 116.) It went into liquidation on August 15th, 1867, and did no business, and possessed no property after August 16th, 1867. (Record p. 118, pp. 4-13.)

On the first day of July, 1867, *The* STEAMSHIP *Company* was incorporated under the Companies Act of 1862, on the eighth day of August, 1867, it changed its name under provisions of the Act to *The National* STEAMSHIP *Company.* (Record p. 110.)

On August 16th, 1867, by and under an instrument given at length in Record, on pages 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, the *Navigation Company* sold its ships and all its property to the *Steamship Company*, and on that day delivered the same to the *Steamship Company*, which ever since has been the sole owner and possessor of such ships and sailed and managed the same. (Record pp. 116-118.)

The *Navigation* Company from that date had no power to do business under Companies Act, and only existed for the purposes of liquidation, and was

finally dissolved November 2d, 1870. (Record p. 118).

The Steamship Company was formed for the purpose of buying the property of the Navigation Company, whose stock was unsaleable by reason of the large calls to which it was subject. The consideration was the stock of the new Company to such of the old Company's Stockholders as chose to take it, and money to dissentient Stockolders; provision was made to raise the necessary money to fill up the capital stock of the Steamship Company to the required amount, and the sale was subject to the debts of the Navigation Company existing on August 16th, 1867.

The officers of the Navigation Company became the officers of the Steamship Company.

Execution was issued on the judgment obtained by Appellant in the Superior Court of the City of New York, to the Sheriff of that County, and returned unsatisfied August 25th, 1868. (Record p. 2.)

The judgment of the Superior Court was assigned by the Appellant to Asa F. Miller, on December 11th, 1869. (Record p. 14.)

Edward L. Andrews, as attorney at law, brought an action in the Supreme Court of the State of New York, by summons, dated January 29th, 1870, in favor of said Asa F. Miller against the *National* STEAMSHIP *Company*. (Record p. 205.) In the complaint, the judgment of the Superior Court, and the return of execution unsatisfied against the *National Steam* NAVIGATION *Company*, was set up: Its British incorporation, and that a short time before the commencement of that action, it was engaged in shipping business between New York and Liverpool, employing steamers, and having a general agency, offices and franchises in New York; that at the time of the accruing of the cause of action, it was so doing business; that about the time of judgment and execution, the *Navigation Company*

assumed in the jurisdiction of New York, and became known by a new name, The *National* STEAMSHIP *Company*; that the Sheriff was thereby disabled from levying on the property, which till then had stood in name of Navigation Company; that the change of name was to cure a technical defect, and that the *Steamship Company* was incorporated under a statute, limiting liability of Stockholders; that the *Navigation Company* handed over all its property, including ships, to the *Steamship Company*, to a sufficient amount to pay judgment, that the *Steamship Company* received such assets as the judgment debtor, remained under same control, never changed its identity, and that the change of name was interposed fraudulently to prevent levy; that *Steamship Company* had ample assets of the *Navigation Company*, as trustee for its creditors; that the *Navigation Company* had not been within the State of New York for a year, and had no property therein, except that standing in name of *Steamship Company*; that such last Company had within the jurisdiction, a steamship and other assets, the property of the Navigation Company.

The prayer is that the *Steamship Company* be decreed to pay the judgment; be enjoined from disposing of the property; and for a receiver. (Record pp. 205-207.)

The Steamship Company answered, admitting judgment and unsatisfied execution; organization of *Navigation Company;* alleging its own distinct incorporation; admitting sale, transfer and delivery of steamships and business, on August 15th, 1867; conduct of shipping business, and employment of steamers by *Navigation Company*, to that time; that it has no property in the State; and general denial of other allegations of complaint. (Record pp. 207, 208.)

The action was tried on pleadings and proofs at a

Special Term of the Supreme Court, Mr. Morrison appearing for plaintiff. (Record p. 208.) Plaintiff's complaint was amended so as to aver that the two Companies were distinct Corporations, and that the *Steamship Company* accepted the property of the *Navigation Company*, agreeing to pay its debts. (Record p. 216.)

Defendant had judgment dismissing complaint on December 12th, 1870.

On January 7th, 1874, Asa F. Miller assigned the Superior Court judgment to Mr. Morrison, for $1,250, stated in the assignment to have been paid to plaintiff's attorneys in said suit, and that in case of success in the pending suit in the Supreme Court, Mr. Morrison was to account to the present plaintiff. (Record p. 15.)

ON APPEAL TAKEN, the Special Term judgment for defendant in this Miller suit in the Supreme Court, came on for argument on appeal at General Term, Mr. Morrison appearing for appellant, and the judgment of Special Term was affirmed on May 7th, 1875. (Record p. 209.)

On May 5th, 1876, an order was by consent of parties made at Special Term, discontinuing this action. (Record p. 18.)

By assignment, dated February 16th, and acknowledged March 16th, 1877, Mr. Morrison assigned the Superior Court judgment back to plaintiff. (Record p. 16.)

By an instrument dated February 19th, 1877, this plaintiff recites that the Superior Court judgment is uncollectable against defendant therein; that for value received she has employed Lauterbach & Spingarn to take proceedings to collect same from this defendant, and if successful to pay to Mr. Morrison, and keep for themselves whatever Mr. Morrison chooses and allows, and to pay to her anything which in his discretion, Mr. Morrison, may allow. (Record p. 41.)

On February 24th, 1877, Lauterbach & Spingarn brought the present action in the New York Supreme Court by service of summons and complaint; on defendants petition this action was removed from the State Court by order filed therein on September 10th, 1877, and in the United States Circuit Court, for the Southern District of New York, to which it was removed on October 15th, 1877. (Record p. 218.)

Under an order of the Circuit Court, made June 11th, 1878, Lauterbach & Spingarn as solicitors for plaintiff, filed a bill in Equity in lieu of their original complaint.

Mr. Morrison verified this bill. (Record pp. 1-4.)

The bill sets up the agreement of August 16th, 1867, between the Navigation and Steamship Companies, and Messrs. Rome & Dixon, and refers to an annexed copy; alleges the identity of officers in the two companies; plaintiffs letters of administration; her recovery of the Superior Court judgment; the various assignments to and fro of the same; the unsatisfied execution; transfer by Navigation Company to this defendant after recovery of appellant [redacted] action in the Superior Court, of property in fraud of her rights; ownership by Navigation Company at accruing of such cause of action at time of entry of judgment, issue and return of execution of certain steamships named, including the *Pennsylvania*; that the Navigation Company had not at those times made change of ownership of such steamers by bill of sale, according to British law, or in any lawful way; winding up of Navigation Company from August 16th, 1867; termination thereof; report July 12th, 1870, by liquidators of final winding up meeting, a copy of which report is annexed to bill; action by Miller against defendant *for the relief sought in the complaint in this action*, and dismissal of complaint therein without findings of fact or law; appeal to

and affirmance by General Term; order of discontinuance at Special Term, copy of which is annexed; defendant's refusal to pay the judgment of the Superior Court; its retention of property in fraud of plaintiff's right to have such judgment paid pursuant to the provisions of the agreement of August 16th, 1867, and in disregard otherwise of plaintiffs rights; that Navigation Company has no property not embraced in transfer to defendant out of which execution or judgment could be satisfied; prayer for a receiver of all the property of the Navigation Company on August 16th, 1867, or since; for an accounting by defendant of such property; that receiver be directed to sell the property and pay plaintiffs judgment, and hold the balance for general relief. (Record pp. 1-3.)

Defendants answer admits agreement of August 16th, 1867; substantial identity of officers of two companies; denies knowledge of administration; admits judgment Superior Court; denies knowledge of assignments; admits unpaid execution; alleges sale and delivery of all its property by Navigation Company to defendant on August 16, 1867, for full consideration; defendants ownership of all the property, including the steamers from that time, and its rebuilding of several, including the *Pennsylvania*; denies the fraudulent transfer alleged in the bill; denies ownership of the steamship by Navigation Company, at time of judgment [redacted] return of execution; reiterates sale and delivery by Navigation Company, before the judgment by good and sufficient instruments of said steamships, and defendants ownership long before such judgment; admits liquidation of Navigation Company from August 16th, 1867; denies knowledge of the winding up report, as set forth in schedule F, except by allegations in bill; admits action by Miller, for identical cause of action set forth in bill; alleges trial of merits and judgment in defend-

ants favor, and its affirmance on appeal at General Term, and that such judgment at General Term has never been appealed from, reversed or set aside; alleges that by these judgments, the cause of action set forth in the bill in this cause, has been finally and absolutely disposed of, and is *res-adjudicata* as between the plaintiff and defendant; alleges that the order of discontinuance in no way affects the finality of said judgments; admits refusal to pay judgment of Superior Court, and that it has kept the property sold and assigned to it by the Navigation Company; denies that this is in fraud of plaintiff, or that she has a right to have her judgment paid out of such property; admits all Navigation Company's property sold and delivered to defendant, but denies all right or equity of plaintiff therein; alleges filing libel in the U. S. District Court, for the Southern District of New York, by plaintiff against the steamship *Pennsylvania*, setting forth this identical collision, between such steamship and the canal boat of plaintiff's intestate, set forth in the complaint of plaintiff in the action in the Superior Court, which was the foundation thereof; that such libel alleged that such collision was the fault of the *Pennsylvania;* that such steamship was seized under process in such suit in which this defendant as owner appeared, claimed, bonded and answered, denying all fault on part of steamship; that such suit was tried on its merits, and on April 26th, 1869, judgment was entered therein in defendant's favor, as claimant; that plaintiff thereupon appealed to the Circuit Court of the United States for the Southern District of New York; that upon the trial in said Court upon the merits, judgment was entered in favor of defendant on January 18th, 1873, which judgment still stands and has never been appealed from. (Record pp. 18-21.)

The cause came on for hearing upon bill, answer and

proofs before Mr. Justice Blatchford, at a Regular Term of the Circuit Court, on the 19th and 20th days of January, 1881. Mr. Morrison alone appeared and argued for plaintiff. After consideration on May 5th, 1881, Mr. Justice Blatchford decided the cause in favor of defendant, and judgment dismissing the bill with costs was entered January 18th, 1881. (Record pp. 225-6)

From that judgment this appeal has been taken.

FIRST.

Res adjudicata by reason of the judgments, (Record, p. 209), of the Special and General Term of the Supreme Court of New York, in the action brought against this defendant, by Asa F. Miller, the assignee of the plaintiff, (Record, p. 14), and under whom she now sues as assignee by MESNE assignments, (Record, pp. 15–17), is a perfect defense in the present suit, and those judgments are a complete bar to the relief herein sought.

The privity of the parties plaintiff in the two suits, is indisputable. Plaintiff's bill alleges that the relief sought herein, and the cause of action are identical with the relief and cause of action as tried and stated in the Miller complaint. (Record, p. 2, fol. 4).

The particular controversy sought to be CONSIDERED here, to wit: the liability of this defendant, as the possessor and holder of the ships, formerly belonging to the National Steam Navigation Company, for the judgment obtained against such Company, was necessarily tried and determined in that action.

(Packet Co. *vs.* Sickles, 5 Wall, 592).

In the bill in the Miller suit, as amended, upon which the trial took place, the separate existence of the two Companies was alleged, and the acceptance by the *Steamship* Company of the *Navigation* Company's property, with agreement to pay its debts. (Record, p. 216, fol. 354). That agreement is made a part of the present bill, and the allegation therein of wrong done, for which relief is sought, is the failure of defendant to pay the Miller judgment, according to the provisions of the agreement. (Record, p. 5, fol. 5). The interpretation of that agreement has been conclusively and authoritatively determined.

Tioga R. R. *vs.* Blossburgh R. R., 20 Wall, 137.

The trial in the Supreme Court of the State of New York, was on pleadings and proofs, and the judgment so recites, (Record, p. 209), the general judgment in favor of defendant, without special findings of fact or law, was as the law of practice in New York then stood more conclusive than if the other form had been adopted.

Viele *vs.* R. R. Co., 20 N. Y., 184.

That judgment stood when this action was brought in the United States Circuit Court, the judgment of a Court of concurrent jurisdiction, directly upon the point at issue, and was as a plea a bar, or as evidence conclusive between the same parties, upon the same matter directly in question in this case.

Duchess Kingston Case., 11 State Trials, 261.

This Court of concurrent jurisdiction, was a Court of record selected by the privy of the plaintiff, a Court of original jurisdiction of the most general jurisdiction existing under the constitution of that State, it had full jurisdiction of the cause and of the parties and its judgment, is binding and conclusive upon parties and privies in every other Court, until it is regularly reversed by some Court having jurisdiction for that purpose. There

was, and is an Appellate Court of last resort in that State, but the plaintiff was disinclined to pursue the litigation further in that legitimate channel.

(Hollister *vs.* Abbet, 11 Foster, N. H., 448).

That judgment stands unreversed, and has never in any way been vacated. As a decree dismissing a bill absolute in its terms without qualifying words, it is a bar. (Durant *vs.* Essex Co., 7 Wall, 107).

The authorities cited on appellant's second point, so far as applicable to the present suit, are a strong re-inforcement of the insistment by respondent that the Miller decrees in the Supreme Court of New York are a bar to appellant's present action.

The order of discontinuance, entered upon consent (Record, p. 18), in no wise touches or affects the finality or the existence of the judgments. That consent could not have been given with any such intention on the part of the defendant in that action.

A discontinuance is never allowed after judgment, after rule for judgement, after general verdict, rarely and only under special circumstances, and by great favor even after special verdict.

Tidd's Practise.
Price *vs.* Parker, 1 Salk., 178.
Turner *vs.* Turner, Ibid., 179.
Low *vs.* Peacock, Barnes, 316.

Dismissal of a bill in the nature of a discontinuance, allowed only when plaintiff not prepared with proof or does not wish to go to hearing. (Bigelow *vs.* Windsor, 1 Gray, 301).

The order for discontinuance was in fact meaningless.

In the case in the New York Court of Appeals cited on appellants' points, (p. 43), Harris *vs.* Del., Lack. & West. R. R. Co., the original order of discontinuance in the local Court at Scranton, Penn., in the action in which the judgment was entered which was pleaded in bar had

been stricken out and instead thereof the record showed that judgment was opened and an order of *non-suit entered*, after a non-suit it is of course conceded that the issues stand open for re-trial.

After discovered evidence, such, for instance, as the alleged newly discovered evidence here, with regard to the Registers of the ships, does not enable the plaintiff to escape the bar of the judgment.

When plaintiff gives evidence as to all the causes of action, and fails as to the whole or a part for want of sufficient proof, defendant may insist upon the bar of the judgment, even if the same evidence, which is sufficient to sustain the second suit, would have authorized a recovery in the first if therein introduced. (Miller *vs.* Maurice, 6 Hill, N. Y.) That this evidence has that potentiality, is not conceded the more complete then under the above authority, the impotency of appellant's effort to make it an excuse and a valid reason for her present suit. That evidence, moreover, was always within plaintiff's reach, the records of the customs and elsewhere in England were always open to appellant's representatives from 1867 to 1875, when Mr. Morrison first consulted them. (Record, p. 23).

SECOND.

Whether the cause of action alleged herein by plaintiff against defendant be held to be *res adjudicata* or not it is respectfully insisted that it cannot be sustained.

On August 16, 1867, the Navigation Company sold and delivered its ships, its business and all its property to the Steamship Company, under the agreement of that date. (Record, pp. 4, 118). The Navigation Company from that time forward, not only ceased to do business of any kind, but ceased to have power to do

business by the express terms of the Companies' act under which only it had its existence. (Record, p. 35, fols. 59–60).

This artificial creature, under the law of its creation and existence, was as powerless from that time to run the ships which it had so disposed of as it was to lay and work an ocean cable or build and run a railroad. Not only so, but its being always limited, from that time forward, was still more circumscribed. It led no longer an active life, it was moribund. It passively existed, only that its liquidators might wind it up. (Record, pp. 35–36).

At the date of such sale and delivery the Steamship Company, by vigor of the Companies' act, was fully endowed with life and capacity to buy and take such ships, property and business, and to carry on and manage the same, (Record, p. 7), and it has always, from that time forward, fully exercised all its powers in that behalf. (Record, p. 118).

The statute said the Navigation Company could not own the steamships, that the Steamship Company could; and the delivery, change of possession and enjoyment were in accordance with the iron rule of the statute.

There are, moreover, other laws of the land of the creation of these Companies regulating the entrance and clearance of vessels, and under the requirements of those laws from August 16, 1867, the Steamship Company has entered and cleared as their owners all the vessels so sold and delivered to it by the Navigation Company. (Record, p. 118).

On October 24th, 1867, about two months after it had bought the fleet of steamships, the Steamship Company was running the *Pennsylvania*, one of that fleet, out of the harbor of New York, when the collision occurred by which appellant's intestate was killed.

Fault was charged upon the steamship. The ship was then within jurisdiction of the Admiralty Courts in both the Southern and Eastern Districts of New York. She was at once proceeded against in Admiralty by the appellant and others to recover damages for the property destroyed. Appellant might have prosecuted the suit for damages for her intestate's death against the ship in the same tribunal. Her advisers thought it better and likely to be more remunerative to sue for that cause of action at law and go to trial before a jury.

They should have been sure they were right before they went ahead. They sued the Navigation Company as the owners of the steamship. That Company appeared; it still had at that time vitality, but not active life; it denied ownership. The Steamship Company appeared in the Admiralty suits, and in every possible way, with iteration and re-iteration, asserted its ownership. Although plaintiff's attorneys in the common law action had been told they were wrong; although they had had that error pointed out again and again in the Admiralty suit, they insisted upon following the wrong path in preference to the right, and got a judgment for alleged faulty navigation of the *Pennsylvania* against a defendant which not only did not own her but which for some time past had had no property and was legally incapable to run the steamship at the time of the collision, had it in fact been the owner.

There was a Company, which at the time had power to own and run steamships; which was running the *Pennsylvania;* which appeared to appellant's Admiralty suit as its owner; which was recognized and contended with as such by appellant's proctor; which so vigorously contested, as owner, appellant's claim for damages against the *Pennsylvania* as to satisfy the Admiralty Courts, in the District and the Circuit, that *its* steamship, the *Pennsylvania*, was not in fault.

and there were moreover the faulty Princeton and her owners near at hand within reach of Process.

What is the equity which compels the Steamship Company to pay this judgment? Why should it father this waif, which from the first has asserted other paternity?

It is not pretended that there ever were bills of sale for the steamships according to the forms of the shipping act, but does that keep their ownership in the Navigation Company?

The property of the Company after the winding up resolution, is applicable by the liquidators to its debts and subject to them, distributable among the share-holders. (Record, p. 35).

According to the resolution of winding up, of date of August 15th, 1867, the property passed through the liquidators to the Steamship Company, who paid for it in stock to the liquidators, with which, or its proceeds, the debts of the Navigation Company were paid, and the balance distributed among the share-holders by the liquidators. (Record, p. 6, f. 11). The Navigation Company had divested itself of its property in the mode prescribed by the Companies' act; it had received full consideration; it had no power to re-invest itself with such property. The liquidators had no property or possession. The Steamship Company had both, and also the power which it fully asserted, to possess and enjoy, and it promptly defended with success its ship when attempt was made to charge damages upon it by allegations of wrong.

What duty lay upon it to defend an action against the moribund Navigation Company, towards which it had fulfilled its every obligation when it paid for its business and ships?

This question may be answered by a few words from Chief Justice Davis' opinion at General Term: "A, who is improperly sued for B's wrongs, cannot compel B to defend or be liable for the result, by

notice that he is sued for an act for which B alone is liable. Nor can a plaintiff sue a party not liable for an injury and then subject the wrong-doer to liability for the result by notice of the pendency of such a suit. * * * As the defendant was not bound to defend an action brought against the National Steam Navigation Company for an injury committed by itself, the recovery in the case is no estoppel to any action brought against itself for the same alleged wrong." Miller *v.* Nat. S. S. Co., 67 Bar, 289. What says Mr. Justice Blatchford in the Circuit Court in the same connection? "With these facts before him that the Navigation Company was not claiming that it owned the vessel at the time of the collision, and that the Steamship Company was claiming that it owned the vessel at that time, and that the Steamship Company was not a party to the suit in the Superior Court; the plaintiff went on with that suit to judgment, thus making the suit not only in the language of the General Term in the Miller suit, one improperly brought against the Navigation Company after it had ceased to do business, 'and was existing only in the process of winding up its affairs,' but one persisted in not by mistake, but after full record notice that another corporation, and not the one sued, owned at the time of the disaster, the vessel which caused it." (Record p. 221).

The language of Mr. Justice Blatchford in the Circuit, satisfactorily disposes of the attempt on the part of Appellant, to build up a cause of action by reason of absence of bills of sale in statute form.

"The consideration in that instrument for the sale of the property, was a good and valid one, and the subsequent dealings of the grantee with the property unquestioned, must be accepted as evidence that the Steamship Company performed its covenants as to its shares to be issued to the share-holders of the Naviga-

tion Company, and thus paid the consideration; when paid, it dated back to the delivery of the property which was August 16th, 1867. The title of the Steamship Company to the ships, became an equitable title to them, as of that date, so far as any cause of action growing out of said collision is concerned. What other title by bill of sale or otherwise the Steamship Company might have found necessary in suits brought by it, or to protect themselves against a subsequent *bona fide* purchaser of the ships, without actual notice or notice by a change of name on the Register, is of no importance in this suit." (Record, p. 220, fol. 369).

"The instrument of August 16th, 1867, accompanied by a delivery of the ships, was a sufficient transfer of the title of the ships, as respected the cause of action growing out of the collision to have sustained against the Steamship Company, the suit *in personam*, which was brought against the Navigation Company." (Record, p. 221, fol. 371).

"The fact of the entry on the registry as to each ship on April 19, 1869, that the ownership of it had been altered to the Steamship Company from the Navigation Company by the board's order of April 17, 1869, and that from the former date the former Company was the registered owner has no bearing on the rights of the parties to this suit as respects the subject matter of it. Whether the board had any right under the facts before it to authorize the new registry is immaterial." (Record, p. 222, fol. 374).

Standing on the ground so laid down in the Circuit respondent deems it unnecessary to go into argument or authorities on the subject of registry and bills of sale.

THIRD.

Appellant's first point, insisting upon a sort of identity between the Navigation Company and the

Steamship Company, is a repetition of the attempt counsel has made through all the Courts; in the Miller suit, at Special Term and on appeal, and in this suit in the Circuit, to pull his case through by two contradictory assumptions, identity and difference—that attempt was unsuccessful in every instance, and it is not deemed necessary here to follow or meet the statements or authorities cited under this head.

FOURTH.

The maxim quoted as auxiliary to appellant's point III, "*omnia praesumuntur*" etc., and the application, to the effect that the Registrar and Custom House Commissioners all acted in the matter of this change of ownership with circumspection and propriety, covers exactly the position where the respondent safely and firmly stands. The new Company was formed under the presumed correct supervision and permission of the officials administering this Companies' Act, and under such supervision the contract between the Navigation Company and this respondent, was initiated and completed. (Record pp. 110, 111, 8, 9, 22, 26, 34, etc.)

In like manner the ships were managed and run with like presumption, under the supervision of the officials administering the merchants' shipping act, and the customs officials.

FIFTH.

Should a Court of Equity stretch out its hand to crown with success the vexatious wrong-headed litigation which has been persisted in throughout these many years? Do not the various assignments and the present ownership of the judgment by Mr. Morrison indicate a speculative dealing with the subjects in litigation ordinarily disapproved by the Courts?

The decrees in Admiralty at Circuit and in District have not been pleaded, nor could they be pleaded as *res adjudicata*, but they are, it is respectfully insisted, entitled to consideration when a court of last resort, sitting in equity, is asked to enforce a technical judgment, based on a mistaken view taken by a common law judge and jury of the collision out of which the alleged cause of action arose. Such collision, after having been examined and finally passed upon by two tribunals familiar with Admiralty law, having been decreed to be in no wise the fault of the steamship, over whose ownership so much contention has been protracted

The decrees in Admiralty bring the situation very near to the cases where equity interferes to prevent the enforcement of a judgment. That this Court should listen favorably to an appeal to enforce can hardly be reasonably expected.

In the trial in the Supreme Court there was no evidence for the defendant—none was necessary. The case was meagerly printed and prepared and presented by appellant, and it may be permitted to be said that there is no proper foundation for the misrepresentation imputed to Mr. Hurst, the manager, in the part of the opinion upon which appellant has laid stress in his argument.

SIXTH.

The decree of the Circuit Court, should be affirmed with costs.

JOHN CHETWOOD,
Sol. *for Respondent.*